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They tortured him and did some evil things too evil to repeat.
There was screaming sounds inside the barn,
There was laughing sounds out on the street.[1]

I. INTRODUCTION

Sometime during the summer of 1955, Emmett Till left the bustling metropolis of Chicago for the quiet pastoral of the Mississippi Delta. Till's mother had arranged for her son to spend time with his uncle, Moses Wright, who lived in a small town named Money, not far from the sleepy oak-lined streets of Greenwood. Only fourteen, Till knew little of Mississippi's past or of its strict code of racial conduct, a code that was enforced both legally, through an elaborate system of statutory prohibitions on interracial contact, and extralegally, through vigilante action. Till's unfamiliarity with local norms made him bold enough to do the unthinkable: to try to impress a cadre of local youths by approaching a white woman and—as that woman later testified in court—propositioning her.[2]

Retribution proved swift. Not long after Till approached Carolyn Bryant, her husband Roy Bryant and his half-brother J.W. Milam knocked on the door of Moses Wright's house and asked for the boy. Brandishing arms, Milam and Bryant seized Till, drove him to a remote location near the Tallahatchie River, and tortured him.[3] As far as authorities could tell from Till's body, later found floating in the river, the torture session lasted for hours as Milam and Bryant alternately punched, pistol-whipped, shot, and eventually drowned the boy, tying him with barbed wire to a two-hundred-pound cotton gin fan.[4]

Though the torture and murder took place outside of the public eye, the savagery of the crime attracted national attention when Till's mother Mamie Bradley ordered the body brought back to Chicago.[5] Once there, Bradley left her son's casket open in a public wake, attracting thousands

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1. BOB DYLAN, *The Death of Emmett Till* (1963).
2. Some claimed that Till whistled at Carolyn Bryant. Others, including Carolyn herself, claimed that he entered her store and propositioned her. STEPHEN J. WHITFIELD, A DEATH IN THE DELTA: THE STORY OF EMMETT TILL 15–19 (1988). Recent evidence suggests that Till acted on a dare, attempting to impress his peers by approaching a white woman. THE LYNCHING OF EMMETT TILL: A DOCUMENTARY NARRATIVE xiii (Christopher Metress ed., 2002); HENRY HAMPTON & STEVE FAYER, VOICES OF FREEDOM: AN ORAL HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM THE 1950S THROUGH THE 1980S, at 3 (1990) (quoting Till's cousin Curtis Jones).
3. William Bradford Huie, *The Shocking Story of Approved Killing in Mississippi*, LOOK, Jan. 24, 1956, at 46.
4. *Id.*
5. Till's wake is described in *Bury Slain Boy*, CHI. DAILY TRIB., Sept. 7, 1955, at 5.

of viewers.[6] Charles Diggs, a black congressman from Detroit, later explained how a picture of Till's partly decomposed, mangled corpse—reprinted in *Jet* magazine—turned the incident into a national scandal.[7] "I think that was probably one of the greatest media products in the last forty or fifty years," recounted Diggs, "because that picture stimulated a lot of interest and a lot of anger on the part of blacks all over the country."[8]

Although the anger generated by Till's murder is often cited as a catalyst for the civil rights movement, it sparked other significant legal changes as well. Precisely because it came on the heels of the Supreme Court's 1954 ruling in *Brown v. Board of Education*, Till's death convinced then-Mississippi Governor James P. (J.P.) Coleman that certain aspects of the state's handling of racial matters had to change. Afraid that popular outrage over racial violence might encourage federal intervention in the region, Coleman removed power from local sheriffs, expanded state police, and modernized the state's criminal justice apparatus to reduce the chance of further racial violence in the state. Though his results proved mixed, many of Coleman's reforms lived on, contributing to the end of public torture and lynching as accepted modes of punishment in the state. This Article discusses those changes, repositioning Till's murder, and *Brown*, in the historical narrative of the time, suggesting that they not only contributed to the fight for civil rights but also to the modernization of criminal justice in the South.

Although legal historians have shown that civil rights triggered an explosion of extremism in the South,[9] Coleman's response to Till suggests that the struggle for racial equality also prompted a change in how Southern officials responded to racial violence. It pushed the South to centralize authority, rein in local officials, improve the administration of justice, and adopt a less violent stance towards blacks—at least publicly. Long decried for its toleration of the public torture and lynching of African-Americans, Mississippi began to discourage any form of public racial violence in the aftermath of Till's murder. Though the torture of African-Americans and of civil rights activists did not stop, it assumed a more surreptitious role in political life.

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6. *Id.*
7. HAMPTON & FAYER, *supra* note 2, at 7.
8. *Id.*
9. *See, e.g.*, MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 398–421 (2004).

To show how this happened, this Article will proceed in seven parts. Part I will provide some background on race relations in Mississippi, using Coleman's political career as a lens through which to view the state's struggle to deal with racial violence in the aftermath of World War II. Part II will discuss the rise of extremism in the state immediately following *Brown*—and how Coleman resisted it. Part III will discuss Coleman's efforts to counterbalance the National Association for the Advancement of Colored People's (NAACP) attempts to use the murder of Emmett Till, along with crimes against other African-Americans, as a device for rallying popular support in favor of federal intervention in Mississippi as early as the 1950s. Part IV will re-cover Coleman's efforts at modernization, showing how he centralized state law enforcement power in an attempt to rein in local sheriffs and to thwart extremists. Part V will discuss Coleman's use of black informants to reduce the chance of racial violence in the state. Part VI will discuss Coleman's response to the lynching of Mack Charles Parker, an African-American accused of raping a twenty-three-year-old white woman in 1959. Part VII will show that, even though Coleman was replaced by extremist Ross Barnett in 1960, Coleman returned to the task of imposing a strict vision of anti-extremist yet tough law enforcement in 1965 as a President Lyndon Johnson appointee to the Fifth Circuit Court of Appeals.

Why re-cover the story of Mississippi's response to Emmett Till now? There are at least three reasons. First, recent Supreme Court rulings have convinced many that *Brown*'s legacy amounts to little more than a call for ending overtly discriminatory laws.[10] Re-covering Mississippi's response to Till suggests that *Brown* also contributed to a dramatic transformation in Southern criminal justice, a transformation that reduced local autonomy, increased centralized control, and modernized Southern approaches to maintaining social order.

Understanding the process of modernization that occurred in Mississippi in the 1950s helps explain how states known for using the "spectacle" of violence to maintain social peace moved towards a more "gentle way in punishment," namely mass incarceration.[11] As of 2005,

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10. *See, e.g.*, Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2738, 2768 (2007). For responses, see Stephen J. Caldas & Carl L. Bankston III, *A Re-Analysis of the Legal, Political, and Social Landscape of Desegregation from* Plessy v. Ferguson *to* Parents Involved in Community Schools v. Seattle School District No. 1, 2007 BYU EDUC. & L.J. 217 (2007); Goodwin Liu, Seattle *and* Louisville, 95 CAL. L. REV. 277 (2007); Joseph O. Oluwole & Preston C. Green, III, *Charter Schools: Racial-Balancing Provisions and* Parents Involved, 61 ARK. L. REV. 1 (2008).

11. I borrow the term *gentle punishment* from Michel Foucault, who tracks the decline of public torture in France during the eighteenth century. During that time, France moved away from "the spectacle of the scaffold" and towards a more "gentle way in punishment." Mississippi's official attitude towards lynching exhibited a similar path.

Mississippi was fourth in the nation for the percentage of its population in prison, with all of the highest percentages being in the South.[12] Although a disproportionate number of these prisoners are African-Americans,[13] Coleman's reforms also facilitated control of whites. This means that the push for freedom in the Deep South contributed not just to desegregation but also to the rise of a more centralized, intrusive police state.

Mississippi's turn away from localism towards a more intrusive state helps explain the final reason for re-covering its response to Till. From the beginning of the Civil War until the 1950s, Mississippi relied on not only legal regulations or law enforcement to preserve its racial hierarchy but also on the private torture and murder of African-Americans, a process known as lynching.[14] Though never formally sanctioned by law, lynching was rarely interfered with by law enforcement.[15] Precisely because lynching occurred in plain view, it acted as a type of public ritual, a "spectacle" aimed at disciplining the African-American population while galvanizing the white.[16] Critical to this spectacle was not simply the execution of black victims but also the torture of them, including the "marking of victims" and punishing them in "spectacular" ways, such as dismembering, burning, or hanging.[17]

Although Governor Coleman did not bring an absolute end to the spectacle of lynching, he did facilitate a larger transformation in punishment, shifting it from public spectacle to juridical obscurity. No

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MICHEL FOUCAULT, DISCIPLINE AND PUNISH 32, 104 (Alan Sheridan trans., Pantheon Books 1977) (1975).

12. PEW CTR. ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, at 34 (2008), *available at* http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf.

13. *Id.*

14. Though lynching occurred during the antebellum period, it took on a "new significance" during and after the Civil War. JACQUELYN DOWD HALL, REVOLT AGAINST CHIVALRY: JESSIE DANIEL AMES AND THE WOMEN'S CAMPAIGN AGAINST LYNCHING 131 (1993); *see also* ARTHUR F. RAPER, THE TRAGEDY OF LYNCHING 25–32 (1969); CHRISTOPHER WALDREP, THE MANY FACES OF JUDGE LYNCH: EXTRALEGAL VIOLENCE AND PUNISHMENT IN AMERICA 9–10, 67–71, 86–87, 90–91 (2002). Lynching increased dramatically following the disfranchisement of African-Americans in the 1890s. *See, e.g.*, Terence Finnegan, *Lynching and Political Power in Mississippi and South Carolina*, *in* UNDER SENTENCE OF DEATH: LYNCHING IN THE SOUTH 189, 201–09 (W. Fitzhugh Brundage ed., 1997).

15. Larry J. Griffin et al., *Narrative and Event: Lynching and Historical Sociology*, *in* UNDER SENTENCE OF DEATH: LYNCHING IN THE SOUTH, *supra* note 14, at 24, 33.

16. *See* FOUCAULT, *supra* note 11, at 34; *see also* HALL, *supra* note 14, at 139.

17. FOUCAULT, *supra* note 11, at 34; *see also* HALL, *supra* note 14, at 139.

longer of use to public governance, torture became a more sporadic, surreptitious practice. Precisely because of the public outrage at the manner in which Till had been mangled, future tortures had to be carried out in a way that left no trace. For those alarmed at the apparent resurgence of torture in the twenty-first-century United States, re-covering Coleman's story helps to cast new torture tactics like waterboarding and the horrors of Abu Ghraib in a new light—products not simply of an increased ferocity but an increased attention, ironically, to civil rights.

II. LESSONS FROM THE PAST

Born in 1914, J.P. Coleman grew up on a farm in Mississippi's hill country—a region known for an "unprecedented outbreak" of lynching in the 1890s.[18] When Coleman was five, a second wave of lynching washed across the South, prompted by the return of black soldiers from World War I.[19] Had his grandfather not influenced him, Coleman might have grown to view lynching as a natural part of the established social order, but the old Confederate soldier encouraged the boy to read the *Congressional Record*, pointing him in a direction that would lead him to the heart of national politics. Inspired by what he read, Coleman began to borrow law books from a district attorney in Ackerman, Mississippi, named Aaron Lane Ford. When Ford decided to run for a U.S. House of Representatives seat in 1934, he asked Coleman to go through the *Record* to find information on his opponent Thomas Jefferson Busby. Coleman ably compiled a notebook documenting Busby's absences from particular votes, prompting Ford to invite him to take a job on his staff in Washington.[20]

Coleman's move to the nation's capital, where he worked as Ford's secretary by day and attended classes at the George Washington University School of Law by night, proved enlightening. For the next four years, he immersed himself in political life, listened to Supreme Court oral arguments, attended congressional debates, and participated in the Little Congress, an organization of young clerks that met in the House Caucus room to introduce and debate mock bills. During one debate, Coleman led a successful challenge to an initiative brought by a young Texan named Lyndon Baines Johnson, sparking a lifelong friendship between

18. Finnegan, *supra* note 14, at 205.
19. HALL, *supra* note 14, at 60, 61.
20. CTR. FOR ORAL HISTORY & CULTURAL HERITAGE, UNIV. OF S. MISS., ORAL HISTORY WITH THE HONORABLE J.P. COLEMAN, FORMER GOVERNOR OF MISSISSIPPI AND CHIEF JUDGE (RET.), THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT 40 (1982), http://cdm.lib.usm.edu/cgi-bin/showfile.exe?CISOROOT=/coh&CISOPTR=1223&CISOMODE=print [hereinafter INTERVIEW OF J.P. COLEMAN].

the two.[21] When Coleman ran for governor in 1955, Johnson contributed financially to his campaign, and in turn, Coleman supported Johnson for the Presidency in 1956, 1960, and 1964.[22]

From Washington, D.C., Mississippi looked different. Coleman arrived just in time to see the election of Mississippi Senator Theodore Bilbo, a populist who became infamous for engaging in vitriolic displays of racial extremism on the Senate floor, attacking anti-lynch laws, and blasting African-Americans for wanting to mongrelize the white race.[23] Though Coleman admired Bilbo for being "friendly and democratic," he came to believe that Bilbo's virulent racism did Mississippi a "disservice."[24] Instead, Coleman thought that the South should project a positive image to the nation, striving to "be on good terms with the people from the North," precisely so that it could develop positive national relationships conducive to its own political interests.[25]

Southern history bolstered Coleman's appreciation for national opinion. By the time he became Governor in 1956, he had accumulated over four hundred books on the Civil War[26] and reminded voters repeatedly of the "dark days of . . . reconstruction" when the federal government sent troops to occupy Southern states.[27] Conversely, he also reminded voters that the Supreme Court had once been an ally of the South during the decades following the Civil War—and could be again.[28] In fact, Coleman even published an article on post-Civil War politics that coincided, in many ways, with his campaign to mount a legalist response to the

21. *Id.* at 4.

22. Coleman expressed his support for Johnson in the 1956 Presidential race in a letter. *See* Letter from J.P. Coleman, Governor, Miss., to Lyndon B. Johnson, U.S. Senator, Tex. (Sept. 24, 1956) (on file with the Lyndon Baines Johnson Library and Museum). For Coleman's support of Johnson in subsequent elections, and for Johnson's support of Coleman's gubernatorial bid, see INTERVIEW OF J.P. COLEMAN, *supra* note 20, at 144–45.

23. A. WIGFALL GREEN, THE MAN BILBO 4–5, 98–105, 124–25 (1963); CHESTER M. MORGAN, REDNECK LIBERAL: THEODORE G. BILBO AND THE NEW DEAL 1–2, 47–51, 224–28 (1985).

24. INTERVIEW OF J.P. COLEMAN, *supra* note 20, at 54.

25. *Id.* at 56. Coleman discussed Bilbo in his interview with Dr. Orley B. Caudill. *See id.* at 53–54. For coverage of the 1935 lynch law debates in Congress, see *Senate Holds Firm for Lynching Test: Southerners' Plan to Adjourn and Thereby Sidetrack Bill is Defeated Again, 37 to 28*, N.Y. TIMES, Apr. 28, 1935, at 20.

26. *Mississippi: The Six-Foot Wedge*, TIME, Mar. 4, 1957, at 24.

27. J.P. Coleman, Att'y Gen. of Miss., Address, Meeting the School Crisis 2 (June 1, 1954).

28. *Id.* at 2–3, 6.

Supreme Court in the 1950s.[29] In it, he showed how Mississippi leaders in the 1890s had feared that defiance "would bring evils upon the state," not least among them "adverse congressional legislation."[30]

Coleman confronted Northern "evils" firsthand after returning to Mississippi and serving as attorney general.[31] Not long after taking office, Coleman defended the death sentence of an alleged black rapist named Willie McGee.[32] McGee, who was first convicted in 1945 for raping a white woman, became an international cause célèbre when a left-leaning, Northern-based civil rights organization called the Civil Rights Congress (CRC) discovered that McGee had been having a consensual affair with his alleged victim.[33] The CRC decided not only to take up the case but to use it as a propaganda tool against the South, sending a full motorcade to Jackson, Mississippi, in 1950.[34] Thanks in part to the CRC, McGee gained outside representation from New York attorney and future Congresswoman Bella Abzug, who battled Coleman all the way to the Supreme Court.[35] Coleman's eventual victory over Abzug before the nation's highest tribunal reinforced his conviction that the Court could ultimately become a Southern ally even as it alerted him to the manner in which outside groups could use Southern atrocities to fuel Northern propaganda.[36] The McGee case alone, for example, led to demonstrations in New York and letters from as far away as China pleading for McGee's release.[37]

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29. James P. Coleman, *The Origin of the Constitution of 1890*, 19 J. MISS. HIST. 69 (1957).

30. *Id.* at 73. Coleman quoted these words, which were initially spoken by Judge Robert H. Thompson at a Mississippi State Bar Association meeting in 1923 about the 1890 Constitutional Convention, in an article that he wrote for the *Journal of Mississippi History*. *See id.* at 72. In that piece, Coleman also noted a turn to legalist evasion as a means of denying the black vote in 1890. *Id.* at 87. For more on legalist evasion surrounding black voting rights, see J. MORGAN KOUSSER, THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880–1910 (1974).

31. CECIL L. SUMNERS, THE GOVERNORS OF MISSISSIPPI 125–28 (1980).

32. For Coleman's role in the case and before the Supreme Court, see *M'Gee Execution Stayed by Court: High Bench Will Rule on New Appeal Justice Black Scores 'Pressure' Telegrams*, N.Y. TIMES, Mar. 16, 1951, at 23.

33. *See* SARAH HART BROWN, STANDING AGAINST DRAGONS: THREE SOUTHERN LAWYERS IN AN ERA OF FEAR 103–05 (1998).

34. *Group Joins in Fight for Execution Stay*, N.Y. TIMES, July 20, 1950, at 23.

35. BROWN, *supra* note 33, at 104; *M'Gee's Fourth Plea Fails in High Court*, N.Y. TIMES, Mar. 27, 1951, at 20.

36. *M'Gee's Fourth Plea Fails in High Court*, *supra* note 35.

37. *Chinese Reds Protest McGee Case to Truman*, N.Y. TIMES, July 27, 1950, at 32; *Group Joins in Fight for Execution Stay*, *supra* note 34; *1,000 in Times Square Rally: 'Save Willie McGee' Group is Routed by the Police*, N.Y. TIMES, July 27, 1950, at 32.

Coleman's experience securing the execution of Willie McGee—along with his early experiences in Washington—helps to explain his response to Till. Just as he had learned that racial extremism did not help Theodore Bilbo's image nationally, so too did he fear that the reptilian violence of Till's murder might jeopardize the state. In addition, just as the McGee case generated unwanted Northern publicity for Mississippi, so too did the acquittal of Milam and Bryant inflame the national press. Avoiding further bad press struck Coleman as crucial, particularly in light of the Supreme Court's recent ruling demanding desegregated schools in *Brown*. Throughout his time as governor, Coleman remained convinced that integration would only occur if Northern power forced it. In his opinion, desegregation was not a priority for Mississippi blacks but was a radical Northern goal, sponsored by left-wing, elitist groups who had little concern for average Southern people. Coleman's battles with the CRC—an organization that had little if any tie to blacks in Mississippi—only reinforced this view. To him, such groups obfuscated the fact that *Brown* was bad for both races and that segregation was a mutually beneficial arrangement. "I am for segregation not because I hate [N]egroes," he wrote one constituent in 1958, but "because I know from experience, as you do, that it is for the best interest of both races."[38] To him, segregation was a "kindness" that made life "easier" for blacks by keeping them protected from white extremists, ultimately representing an "implement o[f] orderly, peac[e]able government."[39] Not only did it neutralize racial tension, but segregation also allowed blacks to improve their lives free from white interference and control.

Of course, implicit in such a view was an inability to see how segregation actually reinforced racial subordination. For example, not only did Jim Crow laws separate whites and blacks in public spaces, but they also facilitated a remarkable disparity in resource allocation. For blacks, public accommodations were not only set apart from whites, for example, but were often considerably inferior. Black schools received less money, black neighborhoods received fewer public services, black hospitals were poorer, and black chances to rise out of poverty were blocked by obstacles to professional education, licensing, and voting. Coleman's inability to see the potentially devastating effects of such

38. Letter from J.P. Coleman, Governor, Miss., to C.C. Smith (Apr. 10, 1958) (on file with the Mississippi Department of Archives and History) [hereinafter Letter from J.P. Coleman to C.C. Smith].

39. *Id.*

barriers to black advancement reflected a deeper blindness that, although not vitriolic or violent, nevertheless made it impossible for him to understand black demands in Mississippi at the time. Indeed, Coleman was shocked when black leaders who had previously assured white officials that they opposed integration later summoned the courage to denounce segregation during a meeting with Governor Hugh White in Jackson in July 1954. Rather than take this as a sign of black frustration with segregation, however, Coleman took it as the reverse: evidence that groups like the CRC and NAACP were brainwashing black leaders.[40]

Confident that neither blacks nor whites wanted to send their children to integrated schools, Coleman campaigned for Governor of Mississippi in 1955 on a platform of improving black education while preventing racial violence. Committed to the notion that segregation was in fact good for both races, Coleman consciously avoided making negative statements about African-Americans and refused to endorse extremist white organizations, such as the Citizens' Councils. This was particularly remarkable given that the Councils had, since the summer of 1954, amassed considerable popular support in favor of outright defiance to the Supreme Court.[41] Coleman was the only one of five gubernatorial candidates who did not endorse the Councils—a move that he rationalized by emphasizing the importance of serving "all the people" in the state.[42] That he won the election suggests that Mississippi voters, who were overwhelmingly against desegregation, remained somewhat open to the idea that there might be more than one way of dealing with the Supreme Court—besides just defiance—as late as 1955.[43]

III. RESISTING "NULLIFICATION"

One of the earliest indications that J.P. Coleman opposed defiance came only two weeks after the *Brown* ruling on June 1, 1954. Responding to concerns about the Supreme Court's desegregation order, Coleman went on Mississippi television and proclaimed confidently that there was "plenty" that the state could do to preserve segregated schools

40. *See* INTERVIEW OF J.P. COLEMAN, *supra* note 20, at 94–95; *Mississippi Offers 'Anything' to Industry: Gov. Coleman Heads a Hunting Party of Seven Here*, N.Y. TIMES, Apr. 19, 1957, at 29. John Dittmer provides evidence substantiating Coleman's suspicion that the NAACP pressured black leaders to endorse integration the night before they were scheduled to meet Governor Hugh White in July 1954. *See* JOHN DITTMER, LOCAL PEOPLE: THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI 38–39 (1994).

41. NUMAN V. BARTLEY, THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950S, at 126–49 (paperback ed. 1999).

42. Coleman reflected on his opposition to the Councils in a letter to a constituent in 1958. *See* Letter from J.P. Coleman to C.C. Smith, *supra* note 38.

43. *Mississippi: The Six-Foot Wedge*, *supra* note 26, at 25.

without resorting to extremism.[44] For example, Coleman noted that the *Brown* opinion substituted legal authority for "psychological and sociological" opinion and did not mention either how or when the South had to end segregation.[45] This meant, Coleman argued, that the State of Mississippi could legally engage in a variety of measures to preserve segregation by manipulating "normal district boundaries" as well as assigning students to schools based on factors other than race, such as "health, aptitude . . . [and] intelligence."[46]

Convinced that "outside meddlers" had put "a few colored children" up to challenging segregation in the South, Coleman argued that black students by and large did not want to give up "their own schools . . . their own associates . . . [and] their own teachers" simply for the chance to integrate with whites.[47] Not only would such a move be challenged by "well-settled social rules" in Mississippi, he argued, but it would also mark an ill-considered rejection of substantive increases in black teachers' salaries together with new, greatly improved black facilities in Mississippi.[48] African-Americans of "good judgment," contended Coleman, would not exchange "a bird in hand for nothing in the bush."[49]

Coleman's conviction that blacks lacked real commitment to integration contrasted starkly to the claims of many white extremists who argued vigorously that blacks were eager to integrate for the unlikely reason that they wanted to engage in interracial sex.[50] Such claims, though preposterous, became the centerpiece of extremist positions like those held by Mississippi Circuit Judge Thomas Pickens Brady in 1954. Brady popularized the view that integration would lead to "amalgamation" in a speech delivered to a group of white citizens in Greenwood, Mississippi, only a few weeks after *Brown* was decided. Lamenting the impact that integration would have on Southern society, Brady announced that black activists wanted to "get on the inter-marriage turnpikes" in pursuit of a "social program for amalgamation of

44. Coleman, Meeting the School Crisis, *supra* note 27, at 4.
45. *Id.* at 3–4.
46. *Id.* at 6.
47. *Id.* at 3, 7.
48. *Id.* at 7–8.
49. *Id.* at 8.
50. For more on fears regarding interracial sex, see Jane Dailey, *The Theology of Massive Resistance: Sex, Segregation, and the Sacred after* Brown, *in* MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION 159–69 (Clive Webb ed., 2005).

the two races" that would "blow out the light in the white man's brain."[51] Such claims, though absurd, played on longstanding fears of interracial sex in the South and inspired members of Brady's audience to form the first Citizens' Council in the summer of 1954.[52]

The Citizens' Councils—a network of segregationist organizations that eschewed violence but embraced economic coercion and legal defiance—spread quickly through the South, forming the backbone of a larger political movement to reject *Brown* known as "massive resistance." Massive resistance, a term coined by Virginia Senator Harry F. Byrd in 1956, rested on the flawed assumption that the best method of opposing the Supreme Court was outright defiance. This opposition drew dubious constitutional strength from a theory popularized by a Virginia newspaper editor named James Jackson Kilpatrick in a series of editorials in November 1955 called "interposition." First devised by James Madison and Thomas Jefferson in the 1790s, interposition held that individual states could substitute—or interpose—their own interpretations of constitutional law for those of the Supreme Court, thereby freeing them of any duty to obey legal rulings such as *Brown*. Although such a position had motivated Southern leaders like John C. Calhoun during the first half of the nineteenth century—and arguably still inspired Southerners like Kilpatrick in the twentieth—interposition made little constitutional sense in 1955. At best, it was a formal way of dressing groundless constitutional rebellion in legal language, useful mainly as a rhetorical tool for extremists to gain uninformed votes.[53]

To J.P. Coleman, massive resistance, and the extremists who supported it, posed just as much of a threat to preserving segregation as the "outside meddlers" who were pushing blacks to file ill-considered legal challenges to segregated schools. So long as black activists and white extremists were allowed to operate freely, Coleman believed that they would jeopardize the South's ability to preserve segregation. On the other hand, if they could be kept in check, then the federal

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51. TOM P. BRADY, BLACK MONDAY 64, 66 (1955); *see also* BARTLEY, *supra* note 41, at 85.

52. BARTLEY, *supra* note 41, at 85. For a first hand description of Brady, see JAMES GRAHAM COOK, THE SEGREGATIONISTS 13–33 (1962). For an academic study of the Citizens' Councils, see NEIL R. MCMILLEN, THE CITIZENS' COUNCIL: ORGANIZED RESISTANCE TO THE SECOND RECONSTRUCTION, 1954–64 (1971). For a discussion of the ideological interplay between sex and segregation, see Dailey, *supra* note 50.

53. Although Kilpatrick popularized interposition in a series of editorials in the Richmond *News Leader* in November 1955, he was not the first Southerner to endorse it as a response to *Brown*. BARTLEY, *supra* note 41, at 129. That credit probably goes to a Virginia attorney named William Old, who published a pamphlet outlining it in August 1955. *Id.* Some confused interposition and nullification. *See, e.g.*, *Mississippi's Leaders 'Divided' on Proposal for Nullification*, S. SCH. NEWS, Jan. 1956, at 6.

government could be kept out of Southern affairs, allowing the races time to separate themselves. Even if some blacks refused to remain in their own schools, he believed that they could be thwarted quietly by redrawing school district boundaries or even by assigning students to schools according to factors that did not refer overtly to their color.[54] Such legalist evasions—coupled with established racial norms—would effectively save segregation in the state.

To drive home the damage that extremists could cause the South, Coleman worked hard to remind white voters in Mississippi that what the South faced in the 1950s was very much like what it had confronted in the 1870s. Just like during Reconstruction's "dark days," he claimed on statewide television in 1954, the South's way of life was being challenged by "individuals of whom not a one ever lived in our state."[55] This challenge had to be met with the same "determination" that ex-Confederates, such as then-South Carolina Governor Wade Hampton, had exhibited during their opposition to Reconstruction following the Civil War.[56] Though Hampton had relied on armed "rifle clubs" to disrupt Republican rallies in South Carolina, Coleman focused instead on Hampton's loyal service to the South, proclaiming that he too was deeply committed to Southern traditions, arguably even more so than politically irresponsible proponents of massive resistance.[57]

Determined to avoid violent defiance, Coleman came into direct conflict with Tom P. Brady and James O. Eastland in December 1955, when Eastland and Brady joined Mississippi Congressman John Bell Williams in signing a resolution endorsing nullification of the *Brown* ruling.[58] Nullification, which lacked any real legal basis, closely mimicked interposition, the theory resurrected by Virginia newspaper editor James Jackson Kilpatrick.

To Coleman, it was nonsense. He told the Mississippi Legislature on December 15, 1955:

> You have probably noticed the manifestos freely issued in recent days by Judge Brady, Senator Eastland, and Congressman Williams, in which these men have advocated that the Legislature pass resolutions of nullification of the U.S. Supreme Court decision. I am shocked and surprised by this proposal, because

54. Coleman, Meeting the School Crisis, *supra* note 27, at 6.
55. *Id.* at 1–2.
56. *Id.* at 8.
57. Ronald F. King, *Counting the Votes: South Carolina's Stolen Election of 1876*, 32 J. INTERDISC. HIST. 169, 170 (2001).
58. *Mississippi's Leaders 'Divided' on Proposal for Nullification*, *supra* note 53.

> history teaches in a long succession of events that such efforts have always failed, and in failing have brought down terrible penalties upon the heads of those who attempted it.[59]

To avoid such penalties, which Coleman's study of Reconstruction made all too clear, the new Governor advocated calm. "What I want to do," Coleman told the state's lawmakers, "is to preserve segregation in Mississippi. I am not trying to grab headlines."[60]

Coleman's mention of grabbing headlines was suggestive. Though leaders like Eastland, Williams, and Brady all proclaimed that interposition was the best possible response to the Supreme Court, it is possible—indeed likely—that they too realized that it was constitutionally flimsy. After all, Brady was an experienced judge, and both Eastland and Williams were accomplished attorneys who had risen to the highest ranks of American government. Their brazen endorsement of nullification may have had less to do with their belief that it would actually stop the Supreme Court and more with an instrumental belief that it could be used to rally white votes. This was certainly true of Eastland and Williams, who had both relied on white voters to keep them in positions of power, and arguably Brady as well, who later confessed to his interest in running for governor.[61]

What led to such beliefs? Why, for example, might leaders like Brady, Eastland, and Williams all come to think that extremism would win them votes, even though it had little chance of actually succeeding against the Supreme Court? And how, if they were correct, did J.P. Coleman win the Governor's race in 1955? Perhaps the best answer is that popular support for defiance grew in direct relation to grassroots organizing by groups, such as the Citizens' Councils, which expanded rapidly across the South from 1956 to 1959. The Councils, aided by extreme segregationists like James Jackson Kilpatrick, endorsed a program of legal defiance—or massive resistance—that they then sold to legally unsophisticated voters as a more robust form of constitutionalism than Coleman's placement schemes. Indeed, prior to the rise of the Councils, Southern voters seemed relatively ambivalent about the best means of dealing with *Brown*. That they overwhelmingly opposed the

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59. Letter from J.P. Coleman, Governor, Miss., to the Members of the Miss. Legislature (Dec. 15, 1955) (on file with the Mississippi Department of Archives and History).

60. *Id.* To Coleman, the resolution was "legal poppycock." Phil Stroupe, *Coleman Rejects Nullification Idea: Governor-Elect Disagrees with Eastland, Williams on Plan to Fight Decree*, JACKSON DAILY NEWS, Dec. 14, 1955 (on file with the Mississippi Department of Archives and History); *see also* HODDING CARTER III, THE SOUTH STRIKES BACK 58 (1959).

61. Brady confirmed rumors that he was interested in running for governor in a conversation with James Graham Cook. *See* COOK, *supra* note 52, at 27.

ruling is relatively certain, yet many voters seemed to have been at least open to the idea that other means of circumventing the Court existed besides just defiance. This was certainly true in Mississippi, as Coleman's victory attests, despite the fact that it was one of the South's most conservative, racially divided states.

Indeed, Coleman gained a certain amount of success by distinguishing himself from Brady, Eastland, and Williams—sometimes known as the "[L]ittle [T]hree"[62]—instead counseling legalist evasion as the best means of preserving the status quo. Afraid that defiance would compromise Mississippi's ability to keep black children out of white schools, for example, Coleman urged a state advisory committee to "pour cold water on any resolution coming before the new legislature for purposes of nullification of the Supreme Court decision."[63] Though Coleman derided Brady, Eastland, and Williams's means, he did not oppose their ends. "I don't have one iota of fear," he assured white Mississippians, "that we will not have segregation continued in this state."[64] He just did not believe that nullification was the way to do it.

IV. *M* IS FOR MISSISSIPPI AND MURDER

To J.P. Coleman, the Little Three's move towards nullification only worsened Mississippi's reputation for racial extremism, an image exacerbated by the killing of Emmett Till in August 1955 along with a string of other murders earlier that year targeting civil rights activists. The first of these happened in May, when an African-American minister named George W. Lee was shot in his car while driving home through the small Delta town of Belzoni.[65] Lee, a member of the NAACP, had been trying to register black voters in Humphreys County and had ignored white requests to refrain.[66] Ike Shelton, the local sheriff, refused to charge anyone for the murder, stating that he could not tell whether the shotgun pellets in Lee's face were bullets or lead fillings in his

62. Letter from Barron Drewry, U.S. Representative, Miss., to J.P. Coleman, Governor, Miss. (Dec. 15, 1955) (on file with the Mississippi Department of Archives and History).
63. Stroupe, *supra* note 60.
64. *Id.*
65. *See* AARON HENRY WITH CONSTANCE CURRY, THE FIRE EVER BURNING 93 (2000) (describing Lee's murder).
66. *Id.*

teeth.[67] On August 13, an African-American named Lamar Smith was killed on the lawn outside Tom P. Brady's courthouse in Brookhaven.[68] Smith had also been active in trying to register black voters. Even though local police had witnessed a white man covered in blood leaving the scene of the murder, they took days to arrest anyone. When three men were finally brought before a grand jury, the jury refused to indict any of them, bolstering the impression that whites in Mississippi tolerated, if not approved of, the killing of black people in the state.[69]

Three weeks later, Emmett Till's body was found. This discovery, together with the shootings of Lee and Smith, inspired the NAACP to release a pamphlet entitled *M Is for Mississippi and Murder* that called for the federal government to intervene, ending the violence in Mississippi.[70] To fuel the fire, high ranking officers in the NAACP made public statements decrying Mississippi's violent record. Roy Wilkins, the NAACP's executive secretary, announced shortly after the Till killing:

> It would appear from this lynching that the state of Mississippi has decided to maintain white supremacy by murdering children. The killers of the boy felt free to lynch him because there is in the entire state no restraining influence of decency, not in the state capital, among the daily newspapers, the clergy nor any segment of the so-called better citizens.[71]

Though something of an exaggeration, Roy Wilkins realized—just as J.P. Coleman did—that white violence could be used to draw federal intervention into the South. In fact, two weeks after the Little Three signed their nullification resolution, Wilkins wrote to every NAACP branch in the country suggesting that they use the Till murder to lobby Congress into passing legislation authorizing federal intervention in the region. "[P]lease write without further delay to both Senators from your state and to the Congressman from your district," he urged NAACP branch leaders around the country, "reminding them of the Till murder and asking that this session of Congress pass civil rights bills to give the Department of Justice authority to act in such cases as the Till killing."[72] Wilkins's strategy, which sought to use evidence of Southern atrocities to lobby directly for congressional intervention in the South, was remarkable. Indeed, it suggests that at least some strategists in the early

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67. *Id.* at 93–94.

68. NAACP, M IS FOR MISSISSIPPI AND MURDER 5 (Nov. 1955), *available at* http://cdm.lib.usm.edu/cdm4/document.php?CISOROOT=%2Fmanu&CISOPTR=2834&REC=15&CISOBOX=lamer.

69. *Id.*

70. *Id.* at 5–7.

71. THE LYNCHING OF EMMETT TILL: A DOCUMENTARY NARRATIVE, *supra* note 2, at 19; *see also* M IS FOR MISSISSIPPI AND MURDER, *supra* note 68, at 5–7.

72. Letter from Roy Wilkins, Executive Sec'y, NAACP, to Branch Officers (Jan. 6, 1956) (on file with the Library of Congress).

civil rights movement were thinking about using white violence to coerce Southern compliance long before the famed direct action campaigns in Birmingham and Selma, Alabama, in 1963 and 1965. Though Wilkins certainly did not advocate direct action protest to provoke such violence, he undoubtedly saw how white extremism could help the black struggle.[73]

J.P. Coleman also recognized how extremism—particularly violence—could help the black struggle. In fact, as early as June 1955, Coleman warned constituents that "Congress might be inclined [to pass intrusive laws] to implement the desegregation decision" if the South chose to pursue defiance.[74] Such an eventuality would be disastrous, argued Coleman, given Congress's far-reaching powers over federal funding, interstate commerce, and the jurisdictional reach of federal agents. Conversely, he maintained that "all the Supreme Court can do is lay down a rule" from within the interpretation of a case, which did not lend itself to particularly aggressive enforcement.[75]

Roy Wilkins, perhaps even more than black legal strategists like Thurgood Marshall, recognized that Congress—not the Court—held the key to black freedom. In fact, three weeks after the Little Three signed their interposition resolution, Wilkins sent Coleman a telegram requesting that he do more for racial justice in his state. The inspiration behind the message was a magazine article by Alabama journalist William Bradford Huie recounting shocking confessions by J.W. Milam and Roy Bryant to the Emmett Till killing, making a mockery of Mississippi's criminal justice system.[76] Given "the admissions" of Roy Bryant and J.W. Milam, wrote Wilkins to Coleman, "the National Association for the Advancement of Colored People calls upon you to convene the grand jury of Le Flore County for the purpose of a new presentment of the kidnap charges against these self confessed criminals."[77] A new trial on the separate charge of kidnapping, not murder, Wilkins explained, would have far-reaching

73. David J. Garrow argues that movement strategists such as Martin Luther King, Jr., began to recognize the manner in which white extremists could help the movement after demonstrations in Albany, Georgia, in 1962. *See* DAVID J. GARROW, PROTEST AT SELMA: MARTIN LUTHER KING, JR., AND THE VOTING RIGHTS ACT OF 1965, at 221–22 (1978).

74. *Mississippi*, S. SCH. NEWS, June 8, 1955, at 18.

75. *Id.*

76. Huie, *supra* note 3. Wilkins recognized that the Till murder could be used expressly to draw federal intervention into the region. Letter from Roy Wilkins, *supra* note 72.

77. Telegram from Roy Wilkins, Executive Sec'y, NAACP, to J.P. Coleman, Att'y Gen., Miss. (Jan. 9, 1956) (on file with the Library of Congress).

effects. "If nothing is done to make them pay for at least one of their crimes," lectured Wilkins, "our country will be held up for international ridicule."[78] That Wilkins mentioned international ridicule suggested that he was using international politics—backlit by the Cold War—as a means of pressuring Coleman into helping African-Americans.

Did Coleman understand, much less fear, such a move? It is almost certain that he did. After all, he had confronted just such a threat while prosecuting Willie McGee in 1951—even receiving letters from officials as far away as China.[79] Now, Wilkins seemed to be assuming the role of the CRC by focusing on Southern atrocities to try to force the South to change its racial politics. To make matters worse, white extremists such as Milam and Bryant seemed to be going out of their way to disgrace the state, further convincing Coleman of the strategic value of moderation. During his inaugural address on January 17, 1956, Coleman alluded to *M Is for Mississippi and Murder*. "Despite all the propaganda which has been fired at us," declared the new Governor, "the count[r]y can be assured that the white people of Mississippi are not a race of Negro killers."[80] No doubt realizing that reporters from national newspapers like the *New York Times* and the *Chicago Daily Tribune* were present, Coleman specifically addressed audiences outside the state: "I would like you, our friends outside Mississippi, to know that the great overwhelming majority of the white people of Mississippi are not now guilty and never intend to be guilty of any murder, violence, or any other wrong-doing toward anyone."[81] Coleman then turned to address his constituents and warned, "We must keep cool heads and calm judgment in the face of all the provocation which is being hurled upon us."[82] He continued, "[W]hile there is no magic remedy for the Supreme Court decision[,] there are multiplied means and methods, all perfectly legal, by which we can and will defeat integration of the races in our state."[83] Coleman's allusion to "multiplied means and methods, all perfectly legal" stood in stark contrast to Brady, Eastland, and Williams's declaration of nullification, and even to his own pressured endorsement of interposition. It was a call for evasion—not extremism—and it illustrated

78. *Id.*
79. *Chinese Reds Protest McGee Case to Truman*, *supra* note 37.
80. Governor J.P. Coleman, Inaugural Address in Jackson, Miss. (Jan. 17, 1955), *in* ST. TIMES, Jan. 17, 1956, at 15A (on file with the Mississippi Department of Archives and History) [hereinafter Coleman, Inaugural Address].
81. *Id.* Just as Coleman suspected, his speech was covered by major newspapers like the *N.Y. Times* and *Chicago Daily Tribune*. *Gov. Coleman Takes Post in Mississippi*, N.Y. TIMES, Jan. 18, 1956, at 14; *Vows to Retain Segregation in Mississippi: But Without Violence, New Governor Says*, CHI. DAILY TRIB., Jan. 18, 1956, at A8.
82. Coleman, Inaugural Address, *supra* note 80.
83. *Id.*

Coleman's conviction that the best way of preventing integration was through legalist means.

Roy Wilkins took issue with Coleman's suggestion that he and activists like him were using white atrocities to force political change, even mentioning "outside interference."[84] Outraged that Coleman would try to pin racial unrest on "interference" by civil rights groups, Wilkins wrote the new governor to inquire about the murder of an African-American named Clinton Melton on December 3, 1955, in Glendora, Mississippi.[85] According to Wilkins, the NAACP had purposely not intervened in the case precisely because it had hoped that Mississippi authorities might prosecute the killer, Elmore Otis Kimbell, who had been identified by three witnesses.[86] Despite the absence of such NAACP "interference," however, an all white jury still refused to convict.[87] To Wilkins, this meant that Mississippi was "unwilling to administer justice" in cases in which African-Americans were killed by whites, thereby validating the NAACP's push for "[f]ederal intervention to uphold justice."[88]

Rather than respond directly to Wilkins's threat, Coleman chose a more evasive tactic, actively discouraging civil rights activists such as the NAACP leader from visiting Mississippi. For example, on April 27, 1956, Coleman wired Adam Clayton Powell, a prominent black congressman from New York, and Dr. Martin Luther King, Jr., an increasingly prominent black minister in Montgomery, Alabama, requesting that they stay out of the state.[89] Citing his "duty" as Governor of Mississippi, Coleman alerted both men to the fact that conditions in Mississippi were "more tranquil than at any time in recent months" and that their appearance in the state would be "a great disservice to our Negro people."[90] In a prepared statement issued to the public, Coleman went even further, calling both King and Powell "professional agitators" akin to the

84. Letter from Roy Wilkins, Sec'y, NAACP, to J.P. Coleman, Governor, Miss. (Mar. 15, 1956) (on file with the Library of Congress).
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. Bulletin, Miss. Council on Human Relations 7 (May 1956) (on file with the Library of Congress); *Gov. Coleman Asks Negro Congressman Adam Clayton Powell to Indefinitely Postpone His Coming to Miss.*, JACKSON ADVOC., Apr. 28, 1956, at 1 [hereinafter *Coleman Asks Powell to Postpone*].
90. *Coleman Asks Powell to Postpone*, *supra* note 89.

"carpetbaggers" and "scalawags" who corrupted Southern politics after the Civil War.[91] Both had been invited to speak at a meeting in Jackson sponsored by an organization called the Regional Council of Negro Leadership (RCNL).[92] King, in particular, worried Coleman due to his charismatic leadership of a massive bus boycott in Montgomery that had begun in December 1955 and that was still in full swing during the spring of 1956. Seeing the avalanche of negative press that the boycott had generated for Alabama authorities, not to mention the greater outpouring of sympathy that it had generated for the black struggle, Coleman recognized that a similar conflagration in Mississippi might compromise his plans for peaceful evasion of *Brown*. Interestingly, both King and Powell complied with Coleman's request, asserting that they had never planned to take up the RCNL's invitation anyway.[93] Although this might have been true, the RCNL still chafed at the Governor's move and attacked him for trying to project a façade of tranquility in the state. "[T]he effort being put forth by Governor J.P.[] Coleman to give the outside world the impression that there is a tranquil state of race relations in Mississippi" must be challenged, lamented the RCNL at its annual meeting in Jackson in April. "[A]s long as the 986,000 Negroes in Mississippi are denied their God given American rights in the field of Education, voting and justice, there will be no tranquil era in Mississippi."[94]

J.P. Coleman sought to prove otherwise. To bolster an image of tranquility in Mississippi, he called for measures far beyond polite requests that civil rights activists stay home. Among these were innovations in the state's law enforcement and criminal justice system. During his inaugural address, for example, he promised that "the full weight of the government will unfailingly be used to the end that Mississippi will be a State of law and not of violence."[95] Acknowledging the negative implications of poor law enforcement like that demonstrated by the sheriffs in Belzoni and Brookhaven, Coleman admonished those in positions of power to conduct government on "a high plane of service, economy, and stability."[96] High enough, he continued, to "leave no doubt" that Mississippi was "an

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91. *Id.*

92. *Id.* Coleman probably did not know that tension existed between the RCNL and the NAACP. For evidence, see Letter from Medgar W. Evers, Field Sec'y, NAACP, to Roy Wilkins, Executive Sec'y, NAACP (Apr. 10, 1956) (on file with the Library of Congress).

93. *Coleman Asks Powell to Postpone*, *supra* note 89. Medgar Evers believed that Powell had actually confirmed attendance at the RCNL meeting. *See* Letter from Medgar W. Evers, *supra* note 92.

94. Bulletin, Miss. Council on Human Relations, *supra* note 89.

95. Coleman, Inaugural Address, *supra* note 80.

96. *Id.*

outstanding, safe place" where outside investors would feel comfortable "to locate and operate" and where all citizens would receive "fair and equitable treatment under fair and just laws."[97] It was a big promise, one that sought to reassure the nation that Mississippi was in fact committed to peace through the centralization of law enforcement. Coleman knew, for example, that one of the weakest links in Mississippi's law enforcement machinery was the local discretion of elected sheriffs who had little interest in presenting a moderate image to the nation or to the world—particularly when such an image did not help them in local reelection campaigns.

V. CENTRALIZING LAW ENFORCEMENT

Convinced that Mississippi needed to reign in violence and to bolster lawfulness, Coleman made reforming the state's criminal justice system a central part of his administration. For example, he announced during his inaugural address, "I shall at the first appropriate opportunity deliver a special message to the Legislature on the necessity of strengthening and improving all phases of our law enforcement machinery."[98] Up to that point, Mississippi's law enforcement machinery had been controlled largely at the local level, which gave the state little power to prevent the type of local defiance dramatized in *M Is for Mississippi and Murder*. To ameliorate this, Coleman advocated for several limitations on local power. One was an unprecedented procedure through which locally appointed authorities and police could be recalled by popular vote.[99] Under Coleman's proposed bill, thirty percent of the voters of any county could request by petition a recall election of a county official, while fifty-one percent could recall a police officer.[100] Once such a recall petition was made, a governor-appointed chancery court would decide whether the official or police officer should remain in office.[101] By allowing the state to take a hand in local law enforcement, the bill

97. *Id.*
98. *Id.*
99. Douglas Starr, *New Law in Effect: Recall Bill Signed by Governor Coleman*, JACKSON DAILY NEWS, Jan. 20, 1956 (on file with the Mississippi Department of Archives and History).
100. *Id.*
101. *Id.*

defied what one newspaper called Mississippi's traditional "hands off policy when it came to 'interferring' [sic] in local affairs."[102]

To further control local affairs, Coleman increased state regulation of local justices of the peace (JPs). Such justices, elected by county, handled the vast majority of criminal cases in Mississippi at the time, yet often possessed little or no legal training. They became notorious in Mississippi for charging exorbitant court fees, as well as unreasonable fines for traffic violations and other petty crimes.[103] Part of this stemmed from the fact that they were paid a percentage of the fees that they charged, an arrangement inviting corruption. Coleman made it a goal of his administration to end this corruption and to modernize the JP system. In 1956, the Governor declared, "Justices of the peace who want to do right have no need to fear, but if JP's resist efforts to improve and modernize their offices, it could result in abolition of the JP court system, and they will have brought it upon themselves."[104]

To further limit local autonomy and to centralize power, Coleman strengthened the state highway patrol. Because state troopers answered directly to him, they provided Coleman with a law enforcement mechanism capable of overriding local sheriffs and intervening in local affairs. To expand state troopers' power, Coleman initiated a "substantial reorganization" of the patrol as well as an overall increase in its numbers.[105] To fund this increase, he recommended and succeeded in obtaining increases in both tag and drivers' license fees throughout the state.[106] As he explained many years later, his changes in the highway patrol would have direct implications for the relationship between Jackson and other parts of the state, particularly the Delta, which was the Citizens' Councils' headquarters. "For years and years," explained Coleman later, "the Mississippi Delta . . . was a fiefdom of its own. They didn't want anybody messing with their business; they ran their own affairs . . . and they just wouldn't permit

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102. *Miss. Legislature Meets with Segregation as Major Issue*, ATLANTA J., Jan. 4, 1956, at A1.

103. During a speech before the legislature in 1958, Coleman called for the fixing of fees chargeable by the justices of the peace: "I hope you will pass a statute clearly fixing the fees of the justice-of-the-peace and putting a stop to the cost racket which has given us so much unfavorable and undeserved publicity." Phil Stroupe, *JP Fines Curbed by House Action: Measure Boosted by Coleman Aims to Kill Off Speed Traps*, JACKSON DAILY NEWS, Apr. 1, 1958, at 1.

104. Phil Stroupe, *Coleman Says New Constitution Needed in State*, JACKSON DAILY NEWS, Nov. 27, 1956 (on file with the Mississippi Department of Archives and History).

105. Frederick Sullens, *Governor Will Be Slow in Dispensing Patronage*, JACKSON DAILY NEWS, Apr. 2, 1956 (on file with the Mississippi Department of Archives and History).

106. Letter from J.P. Coleman, Governor, Miss., to Miss. Legislature (Feb. 20, 1956) (on file with the Mississippi Department of Archives and History).

any—they wouldn't even talk about having—state police."[107] The Delta's aversion to state police stemmed from a remarkable state tradition of localism in law enforcement. Though troopers had long existed in Mississippi, they lacked general jurisdiction and were limited largely to patrolling highways. This meant that local law enforcement officers, particularly sheriffs, possessed almost complete autonomy in their counties, a situation that led to a type of decentralized law enforcement in which local police could essentially decide what laws to enforce and what to ignore. Because state troopers worked for the Governor, any expansion in their jurisdiction or size meant a potential threat to this arrangement because they might be sent to rural counties to enforce state laws independent of local approval. This threat was exacerbated by the fact that many sheriffs made considerable amounts of money by agreeing to turn a blind eye to criminal activity, particularly violations of the state's prohibition against alcohol—a practice with which they did not want state troopers to interfere. To limit outside intervention and to preserve their own autonomy, Mississippi sheriffs lobbied heavily in the state house and senate, both forums in which they had hoped to resist any centralization of law enforcement statewide.[108]

Though omnipotent at home, rural sheriffs proved ineffectual in the state capital. Fears stirred by *Brown* seemed to temporarily override Mississippi's law enforcement localism, creating a situation in which state legislators proved willing to enact Coleman's laws augmenting the authority of state police. This, of course, suggests that *Brown* did not just incite extremism, but galvanized Southern state lawmaking, uniting legislators around the central goal of preserving segregation. For a Southern governor with a strategic sensibility like Coleman, this created a window of opportunity to present aggressive packages of legislation that were then accepted with relatively little resistance. Though legislators still made the law, of course, *Brown* enabled Coleman to exercise a remarkable degree of political leadership over the legislative process.[109]

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107. INTERVIEW OF J.P. COLEMAN, *supra* note 20, at 86.

108. For more on law enforcement in Mississippi in the 1950s, see ROBERT B. HIGHSAW & CHARLES N. FORTENBERRY, THE GOVERNMENT AND ADMINISTRATION OF MISSISSIPPI 160–73 (1954). For more on the tension between sheriffs and state troopers, see V.O. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 235 (1949). *See also* Weldon Cooper, *The State Police Movement in the South*, 1 J. POL. 414, 414–33 (1939).

109. For a more detailed analysis of *Brown*'s impact on executive power in the South, see Coleman B. Ransone, Jr., *Political Leadership in the Governor's Office*, 26 J. POL. 197, 213–18 (1964); Gladwin Hill, *Mississippi*, N.Y. TIMES, Mar. 13, 1956, at 21.

Enhancing the reach of Mississippi's state troopers was not the only part of Coleman's plan that he pushed through the state's legislative process. In fact, the most remarkable measure that he endorsed was the creation of a state agency called the Mississippi Sovereignty Commission. The Sovereignty Commission, established by statute in 1956, was an executive agency charged with using "any lawful, peaceful and constitutional means" to prevent implementation of *Brown*.[110] It possessed police powers as well as adjudicatory capabilities. For example, members of the Sovereignty Commission could subpoena witnesses and also require production of private "books, records, papers and documents."[111] Refusal to produce such evidence could result in imprisonment. Similarly, the Commission had the power to use the Hinds County Chancery Court in Jackson to enforce obedience to any process that it had issued, and it was further granted broad investigatory powers to look into the records of individuals, corporate entities, and political groups.[112] Finally, the Sovereignty Commission could expend any amount of its budget on advertising, presumably to create and distribute propaganda to improve Mississippi's image nationally.[113]

Impressive in scope, the Sovereignty Commission became an integral part of Coleman's strategy for maintaining segregation—and tranquility—in Mississippi. Interestingly, it helped him to control both civil rights activists and white extremists. In the spring of 1958, for example, the Commission became actively involved in thwarting a Citizens' Council attempt to have NAACP officers Medgar Evers and Roy Wilkins arrested. On the afternoon of May 17, 1959, Evers, the head of the NAACP's Mississippi branch, and Wilkins, visiting from New York, were scheduled to speak at a black Masonic Lodge in Jackson. The speeches had been planned months in advance as part of a larger attempt to rally black support for civil rights in the state. Prior to the commencement of the speech, Attorney General Joseph T. Patterson and Zack Van Landingham, a Sovereignty Commission investigator, drove

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110. *Mississippi Sets Up 'Watch-Dog' Group on Race Problems*, S. SCH. NEWS, Apr. 1956, at 10.

111. 1956 Miss. Laws 521–24.

112. *Id.* at 521–22.

113. *Id.* at 523. Coleman called for "an appropriate State Sovereignty bill to enable the state during next two years to maintain a successful fight for preserving separation of races." *Painful Warning: Coleman Tells Legislature State Budget out of Line*, JACKSON DAILY NEWS, Mar. 20, 1956 (on file with the Mississippi Department of Archives and History). For an excellent institutional history of the Mississippi State Sovereignty Commission, see YASUHIRO KATAGIRI, THE MISSISSIPPI STATE SOVEREIGNTY COMMISSION: CIVIL RIGHTS AND STATES' RIGHTS (2001).

to the Lodge "to observe just what appeared to be going on."[114] Once there, the Jackson Police Department's Chief of Detectives Meady Pierce approached them, complaining that the Citizens' Councils had attempted to sabotage the meeting, "You know what some damn fools have done? They have gone and gotten out warrants for Roy Wilkins and Medgar Evers."[115]

Upon investigation, Patterson and Van Landingham discovered that the Citizens' Councils, convinced that "Governor Coleman and State authorities were afraid of Roy Wilkins and Medgar Evers," had obtained warrants from a sympathetic justice of the peace to arrest the two civil rights leaders.[116] In an effort to derail the Councils' strategy, Attorney General Patterson contacted Dick King, a high-ranking Council official, and warned him that arresting the two high-profile civil rights leaders would not aid the cause of white supremacy in the state. Patterson warned that "it would be a grave mistake to arrest Wilkins and Evers because of the national publicity that would follow."[117] Van Landingham then contacted Louis Hollis, Director of the Mississippi Citizens' Council, warning him that the arrests would be bad for Mississippi. While Governor Coleman hurried back to Jackson from a graduation speech in Goodman to deal with the crisis, Hollis followed Van Landingham's advice, contacted other influential Council members in the state, and conveyed to them his discussion with the Sovereignty Commission. By the time of the scheduled speeches, the Councils had withdrawn their warrants.[118]

Not only did Coleman's Sovereignty Commission control white extremists, it also curtailed civil rights activists. One method that the Commission deployed to do this was police surveillance. To take just one example, almost one year before the Sovereignty Commission saved Medgar Evers from arrest, the Commission began tracking his movements around the state. "At the meeting of the State Sovereignty Commission on November 20, 1958," read the minutes of one Sovereignty Commission meeting, "Governor Coleman suggested that spot checks be made of the activities of Medgar Evers, both day and night, to determine whether he

114. Letter from Zack J. Van Landingham to Dir., State Sovereignty Comm'n 1 (May 18, 1959) (on file with the Mississippi Department of Archives and History).
115. *Id.*
116. *Id.* at 1, 3.
117. *Id.* at 2.
118. *Id.* at 3.

is violating any laws."[119] That Coleman ordered the Sovereignty Commission to ensnare Medgar Evers in the violation of petty laws yet shied away from his outright arrest at a public speech appears, on the surface, to be paradoxical. Yet, it hints at the deeper logic behind J.P. Coleman's larger civil rights strategy. Afraid of appearing to be a racial extremist, he had no qualms about appearing tough on law enforcement, particularly if such enforcement happened to ensnare civil rights activists.

Coleman ordered a particularly bold display of law enforcement power in June 1958, when an African-American named Clennon King tried to enroll in summer school at the University of Mississippi.[120] Although King, a thirty-seven-year-old former professor, had little trouble entering campus, he encountered problems when he joined the line to register. Robert Ellis, a university registrar, invited King to his office and promptly asked him to leave. King refused, only to find state troopers waiting for him inside. The officers arrested him, carried him bodily to a waiting car, and then drove him to headquarters where Public Safety Commissioner Tom Scarborough—at Coleman's request—ordered King examined by psychiatrists.[121] Based on the examination, a state judge ordered King committed to a state mental hospital. Governor Coleman, who orchestrated King's commitment, later told a press conference that the activist would either be confined to a mental hospital or tried for resisting arrest and disturbing the peace.[122]

Coleman's neutralization of Clennon King showcased his penchant for shrewd state action. Although King clearly had no mental problems, his quick examination and commitment precluded events from escalating to a riot as they did at Ole Miss four years later. Of course, King's story still made it into Northern newspapers like the *New York Times*, but it failed to make the first page.[123] Coleman, through his deft handling of state police and Sovereignty Commission agents, displayed a knack for quietly defusing black protest. Interestingly, he would refine this ability even more as his agents undertook the manipulation of black leaders themselves to help prevent integration in Mississippi.

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119. Memorandum from the State Sovereignty Comm'n, Subject: Medgar Evers, Race Agitator (Nov. 25, 1958) (on file with the Mississippi Department of Archives and History).

120. *Mississippi Police Seize Negro Seeking to Enroll at University*, N.Y. TIMES, June 6, 1958, at 25.

121. *Id.*

122. *Negro Committed for Mental Tests: Mississippi Holds Man Who Tried to Enter College—Lawyer is Ejected*, N.Y. TIMES, June 7, 1958, at 10.

123. *Id.*

VI. RECRUITING BLACK INFORMANTS

On May 15, 1956, Coleman declared that it was time for the Mississippi State Sovereignty Commission to bring itself into "full effect and fruition" by taking two final steps towards expanding its power.[124] Specifically, the Commission decided to allocate state funds to "buy information" from civil rights activists and, concomitantly, to hire black secret agents to serve as the Commission's "eyes and ears" in African-American communities.[125] In addition to tracking civil rights activists such as Medgar Evers through conventional police tactics, the Sovereignty Commission also sought black agents to guide it through black political networks that were otherwise hidden from white view. These agents were usually older, middle class African-Americans who held prestigious positions in black colleges and schools and feared, correctly, that integration could lead them to lose their jobs. Once on the Sovereignty Commission's payroll, they performed a variety of tasks, such as reporting civil rights activities in their communities as well as intervening directly to defuse civil rights protests.[126]

For example, on December 10, 1957, the Sovereignty Commission's Public Relations Director Hall DeCell reported to Governor Coleman on a meeting in Clarksdale of the Regional Council of Negro Leadership, the same group that had invited Martin Luther King, Jr., and Adam Clayton Powell to Jackson in 1956. Referring to black informers that the Commission employed, DeCell asserted that "[w]e had the meeting well covered with some of our Negro friends and will have by the latter part of this week, a complete typewritten report on what went on."[127] That Coleman was getting typewritten reports of RCNL meetings was remarkable. The RCNL, unlike the NAACP, was a relatively isolated, local organization. That the Governor was reading their minutes suggests

124. *Segregation Unit Votes Spy Set-Up: Mississippi Will Hire Secret Agents to Report Moves in Integration Camp*, N.Y. TIMES, May 16, 1956, at 28.

125. *Id.*

126. Katagiri discusses these informers extensively in his study. *See* KATAGIRI, *supra* note 113, at 36–63.

127. Letter from Hal C. DeCell to Governor Coleman, Miss., Clarksdale Meeting of Regional Council of Negro Leadership (Dec. 10, 1957) (on file with the Mississippi Department of Archives and History). Both John Dittmer and Charles Payne discuss the RCNL. *See* DITTMER, *supra* note 40, at 32–33; CHARLES M. PAYNE, I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE 31–32 (1995). Aaron Henry called the organization a "homegrown NAACP." DITTMER, *supra* note 40, at 33.

a relatively high level of both state surveillance, and intrusion, into black affairs. It also helps to explain how Coleman knew, for example, that Martin Luther King, Jr., and Adam Clayton Powell were scheduled to speak in Jackson, prompting a hasty move by the Governor to contact each leader and dissuade them from visiting the state.

Although legal segregation kept the races apart, Coleman's Sovereignty Commission enabled him to get inside black civil rights circles. Further, the type of information furnished by the Commission helped give Coleman a sense of what parts of the state might need particular attention. In August 1956, for example, Coleman received assurance from a Sovereignty Commission agent named William Liston that whites in Yazoo City were working together with black agents to quell civil rights activity independently of state help. Liston noted that one black agent named Fred W. Young had called a "meeting of all the [N]egro teachers" in Yazoo City and had warned them that "the fastest way for them to lose the proposed new [N]egro schools would be for them to engage in N.A.A.C.P. activities."[128] That African-Americans were being offered new schools, and that black agents were being used to sell such schools, helps explain the extent to which Coleman endorsed a moderate approach to resisting *Brown*, one that rewarded at the same time that it pressured blacks.

Although Coleman's willingness to fund black schools was clearly designed to forestall integration, it was also indicative of a larger, perhaps unexpected, effect of *Brown*. As much as *Brown* seemed to pit the races against each other, for example, it also brought moderates of both races closer together, usually by encouraging them to meet and forge compromises.[129] For example, white moderates throughout Mississippi worked hard to form interracial organizations or committees precisely so that black and white leaders could sit down and negotiate deals in lieu of integrating. One such committee in Mississippi drew attention to itself in the summer of 1956, for example, when Liston reported on civil rights in Vicksburg. According to him, an "inter-racial Committee on Race Relations . . . composed of outstanding and rational members of both races" had worked successfully through negotiation and mediation to "control the extremists on both sides."[130] One member of said committee, J.H.

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128. Confidential Report from William Liston, Investigator, State Sovereignty Comm'n, to J.P. Coleman, Governor, Miss. (Aug. 1–2, 1956) (on file with the Mississippi Department of Archives and History).

129. David L. Chappell goes one step further, arguing that moderates provided civil rights activists with leverage, enabling them to win important concessions. *See* DAVID L. CHAPPELL, INSIDE AGITATORS: WHITE SOUTHERNERS IN THE CIVIL RIGHTS MOVEMENT 192 (1994).

130. Confidential Report from William Liston, *supra* note 128.

White, gained particular praise from Liston for his openness to negotiating with whites, a willingness that might have stemmed from the fact that he was also a professor at the then all-black Mississippi Vocational College.[131]

To Roy Wilkins, over a thousand miles away in New York, such black cooperation was lamentable. During a speech on June 3, 1956, Wilkins exclaimed, "Over in Soviet Russia . . . they had a system of paying children to spy on their parents."[132] In his opinion, Mississippi was now doing the same thing: "Spies will tell who smiled at a Negro yesterday, or what Negro said he was sick of Jim Crow, or what tired Negro woman said she wished she did not have to stand up while white men sat in the bus."[133] Although black collaboration clearly bothered Wilkins, there was not much that he could do to stop it. In fact, some NAACP members in Mississippi even pressured him, threatening to switch sides and to work for whites if he did not comply with their demands. One such mercenary was Gus Courts, a black activist who had been shot by a white racist in his own grocery store in Belzoni, Mississippi, in 1955.[134] Unable to find work, Courts accepted money from the NAACP in exchange for delivering speeches and testifying in favor of civil rights legislation in Congress. By April 1957, however, that money had begun to run out, prompting Courts to ask Wilkins for more. Aware of his potential value to segregationists, Courts threatened Wilkins that if the NAACP did not send him $1500 for a new store, he would switch sides and work for J.P. Coleman. "Must I go back to Mississippi, denounce the N.A.A.C.P. and accept the offers of the South?" Courts wrote Wilkins; "I could have avoided all of this by accepting the offers of the Southern Whites but I chose to stand by the N.A.A.C.P. and its program upon its promises."[135] Courts, perhaps because he was the victim of a relatively sensational crime, proved too valuable a spokesperson for the NAACP to lose. Wilkins sent him the money a week later.[136]

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131. *Id.*

132. *Mississippians Urged to Solve Race Issue Through Honest Discussion*, NEWS FROM NAACP (NAACP, New York, N.Y.), June 3, 1956 (on file with the Library of Congress).

133. *Id.*

134. *See infra* note 149 and accompanying text.

135. Letter from Gus Courts to Roy Wilkins, Executive Sec'y, NAACP (Apr. 18, 1957) (on file with the Library of Congress).

136. *See* Letter from Roy Wilkins, Executive Sec'y, NAACP, to Gus Courts (Apr. 26, 1957) (on file with the Library of Congress).

Roy Wilkins's willingness to pay Gus Courts cash in exchange for making speeches against white Southerners indicated the depth of his commitment to winning a constitutional struggle against the Mississippi Sovereignty Commission and J.P. Coleman on a playing field far removed from the federal courts. Though NAACP lawyers such as Thurgood Marshall certainly became better known as crusaders for *Brown*, Wilkins was still very much involved in the fight, albeit in a more subtle type of propaganda struggle that involved the manipulation of hearts and minds. The goal of this struggle was to build popular support, and ultimately congressional and executive resolve, for coercing compliance with *Brown* in the South. The primary opponents of the NAACP in this struggle were Southern moderates like Coleman, not white extremists like Eastland or Brady. If anything, Eastland and Brady only helped the NAACP by discrediting the South with their absurd declarations of defiance against the Supreme Court, coupled with their ridiculous claims that integration would lead to mongrelization and civilizational collapse. Rather than fear them, NAACP agents sought to actually increase the illusion of their influence. On April 29, 1956, for example, A.M. Mackel, an NAACP member from Natchez, Mississippi, wrote a letter to Roy Wilkins suggesting that *they* infiltrate the Citizens' Councils with agents appearing to be white extremists. "A friend of mine," wrote Mackel, "said we should infiltrate the Councils with the same type of propaganda they are putting on us."[137] Interestingly, Mackel suggested that the infiltrators pretend they were outspoken extremists, damaging the Councils' image by making "a few '[H]itler' speeches."[138] Though such proposals were not acted on, the manner in which they emerged reveals the extent to which the battle over *Brown* bled into ideological terrain. Long before young black activists in the Southern Christian Leadership Conference or the Congress of Racial Equality used direct action to win hearts and minds nationally, NAACP leaders used other tactics, such as the payment of black agents like Mackel and Courts, to achieve a similar end.

To the chagrin of the NAACP, established black leaders often refused to cooperate with NAACP plans, even petitioning to work for Coleman's administration. On November 13, 1958, for example, a black school supervisor named B.L. Bell wrote to Governor Coleman, requesting employment with the Sovereignty Commission.[139] Coleman ordered the

137. Letter from A.M. Mackel to Roy Wilkins, Executive Sec'y, NAACP (Apr. 29, 1956) (on file with the Library of Congress).

138. *Id.*

139. Memorandum from Zack J. Van Landingham to J.P. Coleman, Governor, Miss. 1 (Jan. 12, 1959) (on file with the Mississippi Department of Archives and History).

Commission to conduct an investigation of Bell to determine his reliability and influence. This process included an interview, during which Bell "furnished considerable information and names of individuals in Bolivar County whom he stated were members of the NAACP."[140] After conducting his investigation, a white Sovereignty Commission agent concluded that hiring Bell "has some merit."[141] He recommended paying Bell "$50 a month for a period of 3 months," noting that during this time Bell could monitor civil rights activity in the state, and then "furnish any worthwhile information" to the Commission.[142]

Political pragmatism, coupled with economic incentives, accounted for much of the Sovereignty Commission's success in attracting black agents. Informants sought money or services in exchange for cooperation. A dramatic example of this occurred when a black man named Clyde Kennard applied for admission to Mississippi Southern, an all-white college in Hattiesburg. Kennard, a former paratrooper, applied to enter the school in the fall of 1959.[143] The Sovereignty Commission devised a variety of plans to thwart him, none involving dramatic confrontations or violence. One such plan was a full-scale investigation of Kennard's past, including anything that could be used to disqualify him, including bad credit, bad moral character, and criminal violations. In pursuit of this end, the Commission deployed investigators to search through Kennard's past work record, his past school records, and even vital statistics on his parents' marriage.[144]

The Commission also recruited a taskforce of black ministers and educators to discourage Kennard from submitting his application. As one Commission investigator wrote:

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140. *Id.* Other black leaders who joined Bell included: W.A. Higgins, a school teacher in Clarksdale, Mississippi; B.F. McLaurin, a principal of an all-black junior college in Clarksdale, Mississippi; Dr. J.H. White in Itta Bena, Mississippi; Professor N.H. Burger, a school principal in Hattiesburg, Mississippi; Dr. Lee Owens, a medical doctor in Vicksburg, Mississippi; E.S. Bishop, a professor at an all-black school in Corinth, Mississippi; and Fred Miller of Mound Bayou, Mississippi. *Id.* at 2–3.

141. *Id.* at 3.

142. *Id.*

143. Charles Payne mentions Kennard's case as one of the most frustrating that Medgar Evers faced in Mississippi. PAYNE, *supra* note 127, at 55.

144. Investigative Report by Zack J. Van Landingham on Clyde Kennard: Integration Agitator; Attempt to Integrate Mississippi Southern College 13–21 (Dec. 17, 1958) (on file with the Mississippi Department of Archives and History). "Subject is living with mother and stepfather. (Mother and stepfather may be common law man and wife since extensive investigation revealed no marriage license issued to Silas L. Smith or Leonia Kennard or Kinnard), at Route 1, (Eatonville, Hattiesburg, Mississippi)." *Id.* at 13.

> It was suggested to these individuals that since they were leaders of their race in the community and since they were in favor of maintaining segregated schools, that it might serve a useful purpose if they would constitute themselves as a committee to call on Clyde Kennard and persuade him that it was for the best interest of all concerned that he withdraw and desist from filing an application for admission to Mississippi Southern College.[145]

In exchange for their betrayal of Kennard, the black ministers and educators gave the Sovereignty Commission an implicit list of demands, not least of which was the construction of an all-black junior college in Hattiesburg. The Sovereignty Commission report continued that "[i]t is interesting to note, however, that all three of the [N]egro educators when interviewed on separate occasions, brought into the conversation their need for a Negro Junior College in [Hattiesburg]. The inference was inescapable that they were attempting to bargain in a subtle manner."[146]

One of the more skillful bargainers was J.H. White, the same individual who had been recommended to the Commission for helping subvert civil rights in Vicksburg. To avert a crisis at Mississippi Southern, White suggested that the Sovereignty Commission order the college's president, Dr. McCain, to find some way of bringing Kennard to Jackson where, by apparent accident, he could run into Governor Coleman. An impromptu meeting with Coleman, argued White, would appease Kennard—who, according to White, only wanted attention—especially if the Governor promised an all-black college in Hattiesburg.[147]

J.H. White's not-so-subtle insistence on a black college in Hattiesburg provides a glimpse into the type of *real politik* that permeated race relations in Mississippi in the 1950s. Rather than unsuspecting Uncle Toms, the black employees of the Sovereignty Commission banked on the hope that by aligning themselves with the state, they could preserve their jobs as well as gain benefits for both themselves and the black community. To many of them, the NAACP was an alien, arguably even reckless, organization. Not only did it risk provoking a white crackdown, but it also represented a challenge to local black power. Instead of embracing the civil rights organization, at least some black leaders opted to go around it by engaging in accommodation with white authorities.

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145. *Id.* at 34. "All of these Negroes agreed that this was a desirable solution and they expressed confidence that they would be able to handle the situation and persuade Kennard to refrain from any further action or attempt to enter Mississippi Southern College." *Id.*

146. *Id.*

147. *Id.* at 36. Incidentally, the extensive use of black informers like White did not go unnoticed by civil rights activists. In 1959, Medgar Evers told an audience in Los Angeles that blacks were profiting from "segregation and human misery" in Mississippi by accepting payment from the Sovereignty Commission. Memorandum from Zack J. Van Landingham on Medgar Evers to File 1-23 (July 24, 1959) (on file with the Mississippi Department of Archives and History).

Precisely because he was willing to engage in accommodation, Coleman's extensive use of black informers helped him preempt direct action protest and arguably subvert civil rights activism in the state. At the very least, it helped him pierce the otherwise opaque veil that hid black political organizing from white officials. Black agents became the state's eyes and ears, enabling Coleman and his Sovereignty Commission to intervene directly in the lives of local people engaged in political protest at the grassroots level.

Of course, violence remained a constant threat to black activism in Mississippi. Yet, as activists-for-hire such as Gus Courts illustrate, white violence had a certain perverse currency in the civil rights world. Although it clearly threatened black lives, it also helped the black cause, providing the NAACP with clear evidence that segregation was far from the system of "peaceable" government that J.P. Coleman tried to project.[148] Interestingly, this led Coleman to rail against the manner in which the NAACP paraded victims of white violence like Courts around the country, trying to win sympathy for the black cause. In fact, in March 1957, Coleman even traveled to Washington to testify against Wilkins before a United States Senate subcommittee. The occasion for the testimony was a civil rights bill, precisely the kind of federal intervention that Coleman had feared might happen if the South did not feign compliance with *Brown*.

Committed to equating Mississippi with murder, Roy Wilkins told the Senate subcommittee how Gus Courts had been "shot and seriously wounded" by a white man in his own store in Belzoni, Mississippi, simply for trying to vote.[149] Such acts of racial violence, lamented Wilkins, were not being solved by local authorities and required federal action. Coleman, who had of course been trying to improve Mississippi's criminal justice system precisely to avoid such eventualities, testified that accounts of racial violence in Mississippi were exaggerated.[150] Complaining that Mississippi had become a "whipping boy," Coleman told the subcommittee that only four African-Americans were killed by

148. *See supra* note 39 and accompanying text.

149. *Civil Rights—1957: Hearings Before the Subcomm. on Constitutional Rights of the Comm. on the Judiciary United States S.*, 85th Cong. 291, 300 (1957) (statement of Roy Wilkins, Executive Secretary, NAACP).

150. *Civil Rights—1957: Hearings Before the Subcomm. on Constitutional Rights of the Comm. on the Judiciary United States S.*, 85th Cong. 741 (1957) (statement of James P. Coleman, Governor, Mississippi).

whites in 1955, while one hundred fifty-nine blacks "killed each other."[151] He testified that white Mississippians "do not deserve a blanket indictment just because there were 4 Negroes killed by the whites in that State in 1955, while the Negroes were busily engaged in killing 159 of their own number."[152] Coleman's message tried to downplay the rate of racially motivated white-on-black murders in the state by emphasizing black-on-black crime. This emphasis on black criminality represented a new way of deflecting attention from racially motivated killings, not to mention the shortcomings of local law enforcement. Of course, Coleman did not mention that he was, at that very moment, engaged in the process of trying to improve such law enforcement. Perhaps he felt that such a concession would lend credence to Wilkins's point. Instead, he attacked the manner in which the NAACP used white-on-black killings as chess pieces in "national politics."[153] Meanwhile, he blasted Wilkins for not mentioning black-on-black murders, presumably because they were not as politically relevant.[154] Trying to paint Wilkins as a propagandist, Coleman struggled to reassure the subcommittee that federal legislation would not "aid . . . the Negro" at all, but rather would become a "continuous source of agitation, uproar, tumult, and domestic discord."[155] Here we catch a glimpse of the manner in which Coleman perceived civil rights gains to jeopardize larger state interests, most notably the preservation of peace and tranquility. Here also we see evidence of the manner in which Coleman and Wilkins fought publicly over whether federal intervention should be increased in the state, long before the direct action campaigns of 1963 and 1965.

Despite his best efforts, Coleman's testimony did not prevent the enactment of the Civil Rights Act of 1957. Desperate to get some kind of civil rights legislation passed, Lyndon Johnson, with an eye on the Presidency, made a series of compromises to push the bill through. Though weakened by concessions, the Act reaffirmed Coleman's conviction that white violence could be used strategically by civil rights groups to win more robust federal enforcement of *Brown*.

VII. MACK CHARLES PARKER

In April 1959, during Coleman's final year in office, an African-American named Mack Charles Parker was kidnapped from jail in

151. *Id.* at 740, 741.
152. *Id.* at 741.
153. *Id.*
154. *Id.*
155. *Id.* at 739.

Poplarville, tortured, killed, and left floating in the Pearl River. Four years had passed since the lynching of Emmett Till and, although there had been a lull in racial violence, Parker's murder stirred old fears, particularly in Coleman.[156] To the Governor, Parker's murder created yet another opportunity for civil rights groups such as the NAACP to generate negative propaganda favoring more aggressive federal legislation in the South. Already, the Senate Judiciary Committee was conducting hearings on a second proposed civil rights bill—one that Coleman wanted desperately to stop. Coleman feared that Parker's murder would add momentum to the bill, particularly because it involved the flagrant kidnapping of a prisoner from a county jail. This brazen act of defiance, Coleman feared, would bolster longstanding NAACP claims that racial violence was tacitly sanctioned by Southern state officials, a claim that, if true, bolstered the case for federal intervention in the region.

Coleman also feared that Parker's killing could destabilize a precarious equilibrium between moderate strategies of resistance to *Brown* and the Supreme Court. Since the murder of Emmett Till, for example, there had not been one case of integration in the state. In fact, in 1958 the Supreme Court had even invalidated massive resistance and tentatively endorsed pupil placement, two developments that boded well for Coleman's moderate approach.[157] Of course, if the Court began to suspect that national support for aggressive enforcement of civil rights in Mississippi was growing, then it might feel pressure to revisit placement plans and perhaps even invalidate them. Coleman, naturally, did not want this to happen. In many ways, he stood on the verge of victory over both the NAACP and the Citizens' Councils, a position that drove him to take a particularly adamant stance against the vigilante killing of Mack Charles Parker.[158]

In a controversial move that sought to preempt the NAACP's demands for federal intervention in the South, Coleman requested that the federal government intervene in the case, even inviting the FBI to investigate the Parker kidnapping and murder. He also wrote a letter to Southern governors, asking them to join him in a conference to "come up with the

156. Interview of J.P. Coleman, *supra* note 20, at 95–96.

157. Shuttlesworth v. Birmingham Bd. of Educ., 358 U.S. 101 (1958) (mem.), *aff'g* 162 F. Supp. 372, 383–84 (N.D. Ala. 1958).

158. The Supreme Court declared interposition invalid in *Cooper v. Aaron*, 358 U.S. 1, 16–20 (1958). It also sanctioned Alabama's pupil placement law in *Shuttlesworth*, 358 U.S. 101.

best possible methods of solution" for preventing similar acts of racial violence in the future.[159] Such a meeting, he hoped, would send a clear message to the country that Southern officials did not endorse racial violence, hopefully deflecting any negative publicity created by the crime.

Interestingly, Southern governors disagreed over whether such a stance was necessary. Some, such as Virginia Governor Lindsay Almond, supported Coleman's proposal. "I share your view," wrote Almond, "that the time is now for the Governors of the southern states to sit down in conference and discuss this matter, resolving our views to the end that law and order shall and must prevail throughout the Southland."[160] Other governors, however, declined. "Without second, sober thought," noted South Carolina Governor Ernest F. Hollings, "my immediate reaction is 'no.'"[161] According to Hollings, the furor over the Parker killing was "not near so bad as your letter indicates," and a top level meeting of Southern governors would only "give credence" to allegations by civil rights groups like the NAACP that "something really is wrong with the South."[162]

Hollings's response was arguably naïve. By refusing to meet, he and other governors probably only gave the NAACP more opportunities to make the South look recalcitrant. Of course, not all Southern governors understood as well as Coleman did just how determined black activists were to use white violence to their own advantage. In fact, the divergence of opinion between Hollings and Almond was indicative of a larger rift forming among Southern leaders at the time. To most, like Almond, the days of massive resistance were over and a new era of resistance was beginning, one in which the South needed to pursue legalist evasion, meanwhile taking aggressive action to control racial violence and to project a positive national image. To others, however, defiance was still desirable, if for no other reason than it won votes. Hollings, for example, had just won a battle against University of South Carolina President Donald Russell in 1958 precisely by blasting him for being soft on segregation.[163] Now, he made a point to reject Coleman's meeting, perhaps fearing that it could be taken as a concession to the NAACP.

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159. Letter from J.P. Coleman, Governor, Miss., to John Patterson, Governor, Ala. (May 6, 1959) (on file with the Mississippi Department of Archives and History).

160. Letter from J. Lindsay Almond, Jr., Governor, Va., to J.P. Coleman, Governor, Miss. (May 8, 1959) (on file with the Mississippi Department of Archives and History).

161. Letter from Ernest F. Hollings, Governor, S.C., to J.P. Coleman, Governor, Miss. (May 8, 1959) (on file with the Mississippi Department of Archives and History).

162. *Id.*

163. EARL BLACK, SOUTHERN GOVERNORS AND CIVIL RIGHTS: RACIAL SEGREGATION AS A CAMPAIGN ISSUE IN THE SECOND RECONSTRUCTION 80, 82 (1976).

Disappointed, Coleman traveled to Washington to testify against the second federal civil rights bill in three years, meanwhile finding himself bombarded by questions about Mack Charles Parker. "How [did] they get the key?" asked Colorado Senator John A. Carroll, referring to the manner in which the mob gained access to the prisoner; "[w]as there a conspiracy on the part of the sheriff or the jailers?"[164] H. Slayman, Jr., the subcommittee's chief counsel, asked Coleman why a grand jury hearing to indict the suspects would not be held until November, a delay that Coleman attributed to scheduling. Questions continued, revolving around black voting rights, black rights to jury trials, and even whether the Mississippi State Sovereignty Commission was involved. Coleman tried desperately to bring the focus of the committee back to the proposed civil rights bill, but with little success.[165] He ended up making a somewhat futile reference to the degree of support that he had received among African-Americans in Mississippi for the public schools that he had built—a non sequitur that had little to do with the subcommittee's main topic of interest.[166]

Despite frustrations like the one that he had encountered in Washington in May 1959, Coleman's four years in office proved remarkably successful. He managed to push key pieces of legislation through the Mississippi House and Senate, increasing the centralized power of the state's law enforcement capabilities, while also providing local officials with opportunities to keep black children out of white schools. Coleman also enjoyed a considerable amount of success in neutralizing potentially combustible racial protests. He subverted Clyde Kennard and Clennon King, both applicants to Mississippi universities, who could arguably have triggered riots. He also worked hard to keep outside activists like Martin Luther King, Jr., out of the state, to buy information, and to rein in local sheriffs and justices of the peace.

Perhaps Coleman's biggest failure lay in his inability to retain the confidence of white voters. Despite the many accomplishments of his administration, white voters replaced him with an outspoken segregationist and Citizens' Councils member named Ross Barnett in 1960.[167]

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164. *Civil Rights—1959: Hearings Before the Subcomm. on Constitutional Rights of the Comm. on the Judiciary United States S.*, 86th Cong. 1325 (1959) (statement of James P. Coleman, Governor, Mississippi).
165. *Id.* at 1309–37.
166. *Id.* at 1329–30.
167. BLACK, *supra* note 163, at 60–63.

Although Barnett would go on to obscure many of the gains that Coleman made by fueling both violence and extremism in the state, he would only survive one term.[168] Indeed, as the next section will show, Coleman would have the final say when his old friend Lyndon Johnson appointed him to the Fifth Circuit Court of Appeals in 1965.

VIII. SHAVED HEAD AND MOONSHINE

Only weeks after President Johnson signed a historic Voting Rights Act into law in August 1965, he appointed Coleman to the Fifth Circuit Court of Appeals. At the time, the Fifth Circuit had become celebrated for pro-civil rights opinions thanks to Republican Judges John Minor Wisdom and Elbert Tuttle. Tuttle had even confronted allegations of corruption for assigning civil rights cases to liberal judges, meanwhile keeping them out of the hands of reactionaries like Mississippi Judge Ben Cameron. In the spring of 1965, Cameron died, leaving a seat on the court open. Although Johnson could theoretically have appointed anyone he wanted to the court—including a liberal on civil rights issues—he chose Coleman.

Perhaps the best reason for his choice was electoral politics. Coleman had endorsed Johnson in 1964, and both Johnson and Kennedy in the 1960 presidential elections. He also enjoyed the endorsement of powerful Southern congressional leaders like Mississippi Senator James O. Eastland, who put on hold any disagreement that he might have had with Coleman. Even Robert Kennedy, who knew that Coleman had helped elect his brother President, lobbied for the former Mississippi Governor. Finally, Johnson, who at that point was still considering a second bid for the Presidency in 1968, was arguably reluctant to appoint a liberal to the Fifth Circuit, knowing that such a decision might jeopardize his chances of winning Southern support at the polls.

Not surprisingly, Coleman's appointment—a fairly bold move considering his segregationist credentials—proved controversial. During two days of hearings before a special subcommittee of the Senate Judiciary Committee, opponents to Coleman's nomination presented a litany of reasons why he should not be appointed to the federal judiciary. To take just a few examples, John Conyers, an African-American Representative from Michigan, testified against Coleman, calling him a "calculating legal technician" who had manipulated "the judicial process in order to

168. *Id.*

protect a racist social order" in Mississippi.[169] John Lewis, Chairman of the Student Nonviolent Coordinating Committee (SNCC), called Coleman's appointment "an affront and an insult" to African-Americans of the South.[170] Even Martin Luther King, Jr., prepared a statement in opposition to Coleman's nomination, noting that the Fifth Circuit had "been the major constitutional body to which Negroes might turn in the South" and that appointing Coleman to the court would be a setback for the movement.[171] It would be "a great tragedy" to put Coleman on the Fifth Circuit, argued King, particularly given the type of politics "practiced by Gov. Coleman during his years as the arch[i]tect of Mississippi's plans to circumvent the orders of the very court to which he now seeks appointment."[172]

Despite King's protests, Coleman won Senate approval and used his new position on the Fifth Circuit to continue the trajectory that he had begun as governor: limiting violence and improving legal process.[173] In a consolidation of cases decided in October 1966, Coleman voted to allow civil rights activists facing trial in Mississippi a chance to present evidence in federal district court to the effect that their arrests had been racially motivated. If they could prove that this was the case, held Coleman, then they should be released.[174] Four months later, Coleman decided two cases, one in which members of the Mississippi Freedom Democratic Party (MFDP) had been arrested for distributing leaflets in violation of an anti-leafleting ordinance and another in which MFDP members had been arrested for marching in violation of traffic regulations.

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169. *Nomination of James P. Coleman: Hearings Before a Spec. Subcomm. of the Constitutional Rights of the Comm. on the Judiciary United States S.*, 89th Cong. 19 (1965) (statement of John Conyers, Jr., Representative in Congress, Michigan).

170. *Id.* at 40 (statement of John Lewis, Chairman, Student Non-Violent Coordinating Committee).

171. Press Release, Martin Luther King, Jr., President, Southern Christian Leadership Conference (1965) (on file with the King Library and Archives).

172. *Id.*

173. Coleman's tendency to uphold certain civil rights claims has led scholars like Frank T. Read and Lucy McGough to take a relatively uncritical view of Coleman's jurisprudence. *See* FRANK T. READ & LUCY S. MCGOUGH, LET THEM BE JUDGED: THE JUDICIAL INTEGRATION OF THE DEEP SOUTH 178–79, 443 (1978).

174. Hartfield v. Mississippi, 367 F.2d 362, 364 (5th Cir. 1966) (citing Georgia v. Rachel, 384 U.S. 780 (1966)). Jack Bass notes how *Rachel* was itself a limitation on the removal power forged by Chief Judge Elbert Tuttle. *See* JACK BASS, UNLIKELY HEROES: THE DRAMATIC STORY OF THE SOUTHERN JUDGES OF THE FIFTH CIRCUIT WHO TRANSLATED THE SUPREME COURT'S *BROWN* DECISION INTO A REVOLUTION FOR EQUALITY 291 (1981).

In both cases, Coleman ruled the ordinances unconstitutionally vague, particularly for the manner in which they threatened free speech.[175] Not long thereafter, Coleman confronted an appeal by William Eaton and Collie Wilkins, Jr., two white Alabamans found guilty of murdering Viola Liuzzo, a white mother of five who had traveled south to participate in a massive civil rights march from Selma to Montgomery.[176] Rejecting their argument that they should have been tried in state and not federal court, Coleman read into their crime a deprivation of Liuzzo's right to participate in federal elections, thereby securing their convictions.[177]

Such rulings coincided nicely with Coleman's longstanding interest in controlling extremism, curtailing violence, and improving legal process. They also set the stage for a series of rulings that would gradually align federal law against civil rights demonstrators. In May 1969, for example, Coleman wrote the majority opinion in a case brought by black demonstrators arrested for picketing in Hattiesburg, Mississippi. Specifically, the demonstrators appealed an injunction, issued by a district judge and outspoken segregationist named Harold Cox, which allowed the demonstrators to picket but limited them to six demonstrators per location, demanded them to remain at least five feet apart, and required them to remain absolutely silent.[178] Coleman, upon reviewing the record, determined that the picketers were in fact attempting to provoke violence by singing "freedom songs" that included "words of a generally threatening nature."[179] Noting that the Constitution prohibited the state from silencing protesters completely, however, Coleman modified the injunction to prohibit speech "clearly calculated to provoke a breach of the peace by others."[180]

Although at first glance a relatively innocuous holding, Coleman's decision to sustain Cox's injunction did at least two things. First, it muted civil rights protest by lowering the number of street protesters that could lawfully picket a business to six, a relatively small number. Second, it granted law enforcement a relatively broad amount of discretion in determining what was and was not "calculated to provoke a breach of the peace." Given that so much of civil rights movement activity had attempted to provoke breaches of the peace in 1963, 1964,

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175. Guyot v. Pierce, 372 F.2d 658, 662–63 (5th Cir. 1967); Strother v. Thompson, 372 F.2d 654, 657 (5th Cir. 1967).

176. Wilkins v. United States, 376 F.2d 552, 557–59 (5th Cir. 1967).

177. *Id.* at 561–62.

178. For more on Cox's segregationist views, see Neil R. McMillen, *Black Enfranchisement in Mississippi: Federal Enforcement and Black Protest in the 1960s*, 43 J. S. HIST. 351, 357–58 (1977).

179. Smith v. Grady, 411 F.2d 181, 187 (5th Cir. 1969).

180. *Id.* at 189.

and 1965, this suggests that Coleman was joining other conservative judges, like Cox, to discourage such activity. Although certainly not an absolute endorsement of Cox's rather draconian order, it arguably indicated a move to limit demonstrators.[181]

Coleman shortened the leash even further in August 1970. That month, Coleman voted against the family of Benjamin Brown, an SNCC activist who had been shot and killed when police fired into a crowd of demonstrators in Jackson. Unsympathetic to the Browns' claim that they should have been allowed access to the police files in the case, Coleman argued that it was a "favorite ploy of the law violator" to sue police on "some pretext or another."[182] Downplaying the fact that Brown had been brutally killed for what appeared to be no good reason, Coleman sided firmly with law enforcement, arguing that "fishing" expeditions into police files should not be allowed, lest they undermine the "judicial process."[183]

Two weeks later, Coleman ruled against another civil rights activist in Louisiana who was charged with battery and requested removal from state to federal court. The facts of this case were particularly remarkable. Sometime on the evening of July 28, 1966, an African-American activist named Zelma Wyche led a group of over fifty blacks, some of them armed, to a truck stop in Tallulah, Louisiana, to investigate a report that the café had denied service to a black patron.[184] Upon arriving at the café, Wyche demanded the manager's presence. After a patron suggested that Wyche look for the manager himself, the activist retorted, "What is it to you? Do you want your—whipped?"[185] When the patron tried to

181. In December 1969, Coleman issued a similar ruling, this time upholding the right of a university to suspend students for engaging in direct action protest. In this case, brought by students who were suspended from Southwest Texas State University for mounting demonstrations, Coleman broke from the majority and held that colleges had the right to tell students when and where they could protest. Bayless v. Martine, 430 F.2d 872, 873 (5th Cir. 1969) (Coleman, J., dissenting).

182. Brown v. Thompson, 430 F.2d 1214, 1217–18 (5th Cir. 1970) (Coleman, J., dissenting). For further mention of this case, see CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S, at 254–55 (1981); DITTMER, *supra* note 40, at 413–14.

183. *Brown*, 430 F.2d at 1217–18.

184. Wyche v. Hester, 431 F.2d 791, 792–93, 798 (5th Cir. 1970). Wyche was the President of the Madison Parish Voters League in Madison Parish, Louisiana. *Id.* at 792. He would go on to become the first black sheriff of Tallulah County. *See Top Cop in Tallulah*, TIME, Mar. 2, 1970, at 17.

185. *Wyche*, 431 F.2d at 798 (Coleman, J., concurring in part and dissenting in part).

leave, Wyche gave "two shrill whistles," prompting several members of the black entourage to attack the customer. Only when another white customer produced a shotgun did the attackers desist.[186]

To Coleman, this type of aggressive civil rights vigilantism was completely unacceptable. In his dissenting opinion, Coleman argued that Wyche was not engaged in protected activity and should not have been allowed to remove his case to federal court. Yet the majority disagreed, granting Wyche a hearing at the federal district level to determine whether his battery charge should in fact have been removed to federal court under the theory that he had been engaged in constitutionally protected activity. Lamenting the ruling, Coleman noted that the majority had inflicted a "Sunday punch" on the "sagging ability of local governments to enforce their laws against crimes of violence."[187]

Two years after being outvoted in *Wyche*, Coleman gained the upper hand. In January 1972, he delivered a majority opinion that challenged the ability of nonviolent protesters to have their cases removed from state to federal court, thereby undermining the expanded removal remedy that the Fifth Circuit had worked hard to develop in the 1960s.[188] Specifically, Coleman confronted an appeal from a group of student activists who had been commuting regularly to Mendenhall, Mississippi, from Jackson in January and February of 1970 to participate in marches and demonstrations.[189] One night after a demonstration, the appellants were pulled over by state troopers and arrested for reckless driving. The students were then taken to the local jail, where troopers and county police shaved the leader's head and poured moonshine on his scalp.[190] Though the act drew no blood and left no scar, it sent the victim into fits of pain, torturing him.

Coleman showed little interest. Although considerable evidence existed to suggest that the troopers had engaged in torture to discourage civil rights, Coleman went out of his way to defend the police. According to him, the fact that the demonstrations were in one county and the arrest in another, coupled with police testimony that the driver had been veering between lanes, suggested that there was no relation between the demonstrations and the arrests. Because the arrests were not designed

186. *Id.*
187. *Id.*
188. The case was *Perkins v. Mississippi* (*Perkins I*), 455 F.2d 7 (5th Cir. 1972). The Supreme Court had approved Tuttle's innovations, albeit in a somewhat restricted form, in *City of Greenwood v. Peacock*, 384 U.S. 808, 834–35 (1966), and in *Georgia v. Rachel*, 384 U.S. 780, 805–06 (1966).
189. *Perkins I*, 455 F.2d at 8.
190. *Id.* at 8–9.

to interfere with constitutional rights, he continued, the case should be remanded to state court.[191]

Judge John R. Brown disagreed in a vigorous and lengthy dissent, warning that Coleman's opinion threatened not only to limit the removal remedy but also to excuse a blatant attempt to prevent citizens from exercising their constitutional rights. Noting that the state troopers had been present at the demonstration, had taken photographs of the activists, and had later followed the van out of Mendenhall, Brown concluded that the true motivation behind the arrest was to prevent further demonstrations, not to apprehend reckless drivers. Bolstering this conclusion, argued Brown, was the torture of the leader, along with evidence that the state troopers had warned him about participating in civil rights activities in Mendenhall before, promising that they were "not going to take any more of this civil rights stuff."[192] All of these factors combined, concluded Brown, to show that both the arrests and the state prosecution were a "classic example of the misuse of State criminal procedures for the sole purpose of intimidating the exercise of equal civil rights."[193]

Coleman—relying heavily on the testimony of the state troopers involved—stood fast. To him, the relatively obvious targeting of the activists by the police was less important than the lawlessness that the activists themselves were engaged in. Shifting attention from the police to the activists and their friends, Coleman focused on the fact that two acquaintances of the demonstrators, both ministers, had arrived at the jail where the activists were being held with weapons in their car, pleading for their release. Though the ministers left their weapons as they entered the station, an altercation ensued between them and the police, during which a sheriff was allegedly punched in the face. To Coleman, this type of aggressive civil rights "activism" was unacceptable. "[W]e are under no duty," he wrote, "to extend some kind of left handed judicial approval to the practice of carrying an arsenal of weapons on night time visits to jails or police stations, even if the possession of such weapons is otherwise lawful."[194]

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191. *Id.* at 11.
192. *Id.* at 15 n.7 (Brown, C.J., dissenting).
193. *Id.* at 58 (Brown, C.J., dissenting). Brown rooted his dissent in two Supreme Court opinions. *See Peacock*, 384 U.S. 808; *Rachel*, 384 U.S. 780.
194. *Perkins I*, 455 F.2d at 10–11.

Though the visit by the two ministers to the jail arguably had nothing to do with the viability of the constitutional claims of the arrested students, Coleman's holding reflected a new angle of attack against direct action protest. Instead of a decision about civil rights, Coleman transformed his opinion into a defense of law enforcement. According to him, state police had not gone after civil rights activists, but rather civil rights protesters had sent armed emissaries after the police.[195]

Perhaps surprisingly, Coleman won support for this position. Twelve months after overruling Judge Brown, he marshaled a majority en banc opinion on the same case over the protests of John Minor Wisdom.[196] Although Wisdom joined Brown in arguing for a broad reading of the removal remedy, the en banc majority affirmed Coleman's holding that the measure did not allow the federal government to intervene when law enforcement was "lawfully carrying out" its duties.[197] Although there was substantial evidence to suggest that this was not happening, as illustrated by the torture of the Jackson civil rights leader, the majority joined Coleman in rejecting the compensatory claims of the demonstrators.[198] Though briefly overshadowed by state politics, Coleman's commitment to ending public violence and bolstering law enforcement had eventually taken hold in the federal courts.

IX. CONCLUSION

Several factors contributed to the ascendance of Coleman's law enforcement vision. One was Coleman's ability to reframe resistance to civil rights in a racially neutral manner, something that he had begun to do while Governor of Mississippi in the 1950s. Another was a dramatic change in how those who challenged racial norms were handled in the Deep South. Taking the Mendenhall case as an example, the act of applying alcohol to a newly shaved head, though excruciating, lacked the potential to generate the kind of outrage that Emmett Till's mangled corpse had in 1955. This explains Coleman's willingness to reject the claims of the Mendenhall demonstrators. He had worked hard to modernize law enforcement in Mississippi precisely because he understood how acts of public violence could jeopardize Southern interests. Bloodless

195. Critical to this was evidence that the demonstrators who did return from Mendenhall issued an "alarm" regarding the arrest of the appellants, leading the ministers to visit the jail. Such confrontation, Coleman suggested, should be discouraged, not constitutionally protected. *Id.* at 8, 10.

196. *Id.* at 61; Perkins v. Mississippi (Perkins II), 470 F.2d 1371, 1371 (5th Cir. 1972) (en banc).

197. *Perkins II*, 470 F.2d at 1371 (citing 18 U.S.C.A. § 245(c)).

198. *Peacock*, 384 U.S. 808; *Rachel*, 384 U.S. 780.

acts of private violence, on the other hand, particularly those that had caused no "spectacle" and had made no mark, left Coleman indifferent.[199] So long as torturers devised traceless methods of administering pain, torture could continue.

Although it would be a mistake to equate Mississippi with the rest of the South, Coleman endorsed reforms that dramatically altered the balance of power in his state, removing autonomy from local officials and granting it to centralized authorities. To take just a few examples, he expanded the jurisdiction and reach of state police, improved information gathering, and extended appellate review to local justices of the peace. Although Coleman's ultimate goal was to facilitate evasion of *Brown*, many of these reforms had a positive effect on African-Americans who had long known the state to be complicit in public torture and killing.

Not just a representative of Mississippi, J.P. Coleman ended up having an influence on much of the region as a Fifth Circuit judge. At the time, the Fifth Circuit controlled most of the Deep South, including Mississippi, Louisiana, Georgia, Alabama, Florida, and Texas.[200] As an appellate judge, Coleman punished public killers like the murderers of Viola Liuzzo but not police who pursued more "gentle" forms of punishment, like the shaving of the activist in Mendenhall.[201] In so doing, Coleman sent a relatively clear message that the era of public torture and murder for racial transgressions had come to an end. Though he was certainly not alone in drawing the curtain on lynching, his role as governor of one of the South's most recalcitrant states during the height of massive resistance—coupled with his role on the Fifth Circuit in the 1970s and 1980s—makes him a particularly compelling lens through which to view transformations in how the South dealt with race. Many of his reforms live on in Mississippi today, just as his judicial opinions remain a part of federal law. Coleman's story helps to show how Southern attitudes towards the "spectacle of the scaffold" evolved relatively quickly in the aftermath of *Brown* and the murder of Emmett Till.[202]

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199. FOUCAULT, *supra* note 11, at 32.
200. The Fifth Circuit split into the Fifth and Eleventh Circuits in 1981. *Largest U.S. Appeals Court to Split Thursday*, CHI. TRIB., Sept. 27, 1981, at 2.
201. *See supra* text accompanying note 11.
202. FOUCAULT, *supra* note 11, at 32.